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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
UNITED STATES OF AMERICA

3 v. 12 CR 626 (ER)

4 RAYMOND CHRISTIAN a/k/a

"Reckless"

5 GLENN THOMAS, a/k/a "Gucci"

TYRELL WHITAKER, a/k/a "Bow Wow"

Defendants

6 -----x

New York, N.Y.  
August 11, 2014  
9:10 a.m.

9 Before:

HON. EDGARDO RAMOS

District Judge

11 APPEARANCES

12 PREET BHARARA

United States Attorney for the

13 Southern District of New York

ANDREW BAUER

14 KAN M. NAWADAY

Assistant United States Attorney

15 DAVID S. GREENFIELD

16 and

ANTHONY STRAZZA

17 Attorneys for Defendant Christian

18 LAW OFFICES OF DON BUCHWALD

Attorney for Defendant Thomas

19 DON D. BUCHWALD

20 KELLEY DRYE & WARREN LLP

Attorney for Defendant Thomas

21 LEVI DOWNING

22 GEORGE ROBERT GOLTZER

and

23 YING STAFFORD

Attorneys for Defendant Whitaker

24 -- also present--

S.A. Andrei Petrov - FBI

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1 (Trial resumed)

2 (In open court; jury not present)

3 MR. BAUER: Judge, I believe last week Mr. Goltzer put  
4 on the record something that he discovered with regards to  
5 Count Six of the indictment with regards to his client Tyrell  
6 Whitaker. That was that he was looking over the juvenile  
7 paperwork that the government had filed back when we sought  
8 authorization from the U.S. attorney and then moved before your  
9 Honor to transfer Mr. Whitaker to adult status. What  
10 Mr. Goltzer had discovered is that the juvenile paperwork, the  
11 juvenile complaint, the juvenile information only included  
12 charges for the robbery and for the shooting, the cause of  
13 death of Jeffrey Henry. It did not include the substance of  
14 Count Six, which is using a firearm during and in relation to  
15 the narcotics conspiracy.

16 Mr. Goltzer is correct. We've reviewed the paperwork.  
17 It is, if not an oversight, it was at least obviously caused by  
18 our office. We are inclined to, due to Mr. Goltzer request,  
19 move to dismiss that count for Mr. Whitaker. Our concern --  
20 not our concern, the thing that I wanted to bring before your  
21 Honor before we did so was to bring you back to two Fridays ago  
22 when the parties argued the various 404(b) motions. At that  
23 time defense counsel had made the argument or tried to preclude  
24 evidence with regards to Mr. Whitaker's drug selling as well as  
25 his membership in gangs. At that time the government had made

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1 a number of arguments as to why that evidence was relevant.

2 The first was that it went to the background of the  
3 conspiracy and the background as to the relationship between  
4 the defendants as well as their coconspirators. We also argued  
5 that it went to motive and other 404(b) type arguments in that  
6 Whitaker was a drug seller he was part of the Bloods, and  
7 therefore that was one of his motives in participating in the  
8 robbery and eventual murder of Jeffrey Henry. But one of the  
9 other arguments we made is that he was charged with Count Six  
10 and Count Six, the underlying object was the narcotics  
11 conspiracy.

12 We still believe that that the first grounds, the  
13 motive, those grounds for admissibility still are very much in  
14 play. I don't think Mr. Goltzer is prepared to renew those  
15 objections at this time. I don't think he's going to ask for  
16 any additional rulings from your Honor, but I wanted to make  
17 the record clear, that if we dismiss Count Six we still firmly  
18 believe that all of that evidence, his drug selling and his  
19 membership in gangs and the like, and that also includes a  
20 robbery that he did with Kevin Burden, that all of that  
21 evidence is still admissible under the alternate grounds of  
22 admissibility.

23 THE COURT: So how many counts would that leave  
24 Mr. Whitaker in? Just two counts?

25 MR. BAUER: Three counts actually. He's charged in

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1 Count Two, which is the robbery, the substantive robbery, he's  
2 charged in Count Four, which is the shooting that caused the  
3 death of Jeffrey Henry. And then Count Five is a mirror to  
4 Count Four. Count Four is brought under 18 U.S.C. 914(j).  
5 Count Five is brought under 924(c), the discharge of the  
6 firearm. And also, if Mr. Whitaker or any defendant is  
7 convicted of both at trial, then at sentencing our office only  
8 proceeds on the 924(j), not the 924(c).

9 MR. GOLTZER: What Mr. Bauer says is correct, your  
10 Honor. What Mr. Bauer says is accurate. I am assuming that  
11 the Court's rulings would be the same, so I am not going to ask  
12 that anything be reopened at this time.

13 As I mentioned to Mr. Bauer, the only issue that is  
14 open has to do with the Mallory Burden tape based upon issues  
15 that may have come up during the trial, and the Court has  
16 already reserved on that.

17 THE COURT: OK.

18 I recall that there's already been some testimony  
19 about Mr. Whitaker's drug dealing, correct?

20 MR. BAUER: Yes.

21 MR. GOLTZER: Yes.

22 MR. BAUER: Mr. Baynes on Thursday testified to it.

23 MR. GOLTZER: Based on your Honor's prior rulings,  
24 notwithstanding the coming motion to dismiss, I'm contented, as  
25 I mentioned to the government, to rely on the record of the

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1 motions in limine, and I won't be making a motion to strike.

2 THE COURT: What needs to be done, therefore, by way  
3 of dismissing Count Six against Mr. Whitaker.

4 MR. BAUER: I can make that motion now, early, your  
5 Honor, with the consent of the parties. You can rule now or  
6 take it under advisement.

7 THE COURT: I'm ready. If you want to move now, I'm  
8 ready to grant the motion.

9 MR. BAUER: Formally now the government, for all the  
10 reasons that I stated earlier, moves to dismiss Count Six with  
11 regards to Tyrell Whitaker.

12 THE COURT: Very well. That motion, that application  
13 is granted.

14 MR. BAUER: Thank you your Honor.

15 MR. GREENFIELD: I have an application.

16 THE COURT: Yes, sir.

17 MR. GREENFIELD: Prior to the trial, the government  
18 sought a stipulation from the defense -- can I stand over here,  
19 Judge.

20 THE COURT: You can.

21 MR. GREENFIELD: Prior to trial, the government sought  
22 a stipulation from me regarding the buccal swab that contained  
23 my client's DNA taken by Detective Goodman on October 7, 2010,  
24 the stipulation being that the swab was taken and turned over  
25 to the property clerk's office and sent to Albany at a later

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1 time.

2 I did not agree to that stipulation. I said I don't  
3 see a chain of custody. Show me the chain of custody, and I  
4 might stipulate to it.

5 All I was told after that was that Goodman would  
6 testify and that Fredericks would testify, and they would make  
7 the chain that way.

8 THE COURT: OK.

9 MR. GREENFIELD: I questioned and I received no  
10 documentation backing up this chain.

11 Based on the fact that there was no documentation  
12 regarding the chain as to the buccal swab, and based upon the  
13 fact that we've gotten a plethora of chain of custody from just  
14 about every witness in this case, formalized chain of custody  
15 documents from the Newburgh police as well as the Albany lab, I  
16 felt safe that there was no chain of custody, formal chain of  
17 custody documentation, and that's how I proceeded with  
18 Detective Fredericks when I cross examined him.

19 During the cross-examination, if you will recall, the  
20 government stood up and asked me if I would stipulate with them  
21 that in fact there was no chain of custody with regard to the  
22 documentation of the buccal swab in the Henry chain of custody.  
23 We stipulated to the fact that there was no documentation of  
24 the buccal swab. Over the weekend the government sent a formal  
25 chain of custody for the buccal swab, which I had never seen

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1 before.

2 Based upon my decision-making process to go into the  
3 Fredericks, to go after Fredericks with regard to the chain of  
4 custody, I think it put my defense in a great position of  
5 jeopardy.

6 I was blindsided, Judge. If I had those documents  
7 prior to my cross-examination of Fredericks, I may not have  
8 questioned him whatsoever about chain of custody.

9 The government has an obligation under Rule 16 and  
10 even under 3500 to provide that type of stuff, not after I've  
11 cross-examined the witness, but before I cross-examined the  
12 witness. If I didn't get the chain of custody, the burden is  
13 on them, the onus is on them, and they have to bear the  
14 problem.

15 I have a right under Rule 16 to expect that any  
16 documentation that would be material to my defense would have  
17 been turned over prior to the beginning of trial under Rule 16,  
18 and certainly under Rule 35 prior to the witness's testimony.

19 THE COURT: I get all that, Mr. Greenfield.

20 What is your application?

21 MR. GREENFIELD: First I move to dismiss the  
22 indictment.

23 THE COURT: That application is denied.

24 MR. GREENFIELD: Second, I would move for a mistrial.

25 THE COURT: That application is denied.

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1 MR. GREENFIELD: Third, I would move to preclude the  
2 testimony with regard to the DNA evidence with respect to my  
3 client coming into evidence.

4 THE COURT: All of the DNA evidence?

5 MR. GREENFIELD: There's only one piece.

6 THE COURT: OK. So let's hear from the government.

7 MR. NAWADAY: Your Honor, first, the reason that the  
8 chain of custody with respect to the buccal swab was -- number  
9 one, it is accurate that it wasn't originally part of the  
10 Jeffrey Henry evidence because that buccal swab was taken, as  
11 Mr. Greenfield has known for many, many months, from a  
12 different case from an arrest in October 2010 of Raymond  
13 Christian. That's number one.

14 Number two, Mr. Greenfield has known how we were going  
15 to prove the chain of custody for the buccal swab, that it was  
16 going to be the detective who took the swab and that we want  
17 have necessarily all the links in the chain.

18 We would also have someone from the laboratory testify  
19 on the other end that they took that buccal swab from Raymond  
20 Christian, that they received from the Newburgh police, and  
21 they took that swab and they tested it.

22 So we don't need every link in the chain, and at the  
23 end of the day it goes to the weight of the evidence if there  
24 is a missing link in the chain. So I actually don't think that  
25 Mr. Greenfield has any grounds to ask for precluding our use of

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1 this buccal swab.

2 As it goes to authenticity at the end of the day, and  
3 I don't think we have to prove chain of custody through a  
4 certain manner that Mr. Greenfield says we have do, like  
5 through documentation, we do it through a live witness such a  
6 person in the chain and someone else who had dealt with that  
7 piece of evidence at the end of the chain. It just goes to  
8 authenticity at the event of the day.

9 THE COURT: Why wasn't it turned over?

10 MR. BAUER: Judge, since I was who had obtained a lot  
11 of documents I figured I would speak. We turned over many  
12 documents from that October 7, 2010, arrest of Mr. Christian,  
13 arrest reports, evidence reports demonstrating the evidence  
14 that was collected, things of that nature.

15 Frankly, we didn't know that that document existed at  
16 the time that we were collecting those documents. Upon  
17 Mr. Greenfield's cross-examination of Detective Fredericks, it  
18 became clear that there was such a document, and it became  
19 clear just how much hay Mr. Greenfield was going to make of  
20 this chain-of-custody argument.

21 You can check my e-mail or text messages in that as  
22 soon as we had the first break I said we need to find that  
23 document and we have to by the next morning.

24 But to be totally frank, the reason why we didn't have  
25 that document is because we didn't realize, I didn't realize

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1 until Detective Fredericks testified that such a document was  
2 made for every single piece of evidence.

3 As Mr. Nawaday said, our focus has always been on that  
4 December 15 incident, and when we had 116-page chain of custody  
5 report for that document, for that incident in which Detective  
6 Fredericks reported to a crime scene and collected hundreds of  
7 pieces of evidence, I thought the situations were discrete.  
8 Obviously I was wrong. Detective Fredericks appears to have --  
9 I'm sorry, the CSU creates that document for every piece of  
10 evidence that comes in.

11 As to Detective Fredericks's 3500, his name is on the  
12 report as somebody who accepted that buccal swab into evidence,  
13 but he wasn't going to testify to it because he didn't remember  
14 it. Because, as he testified, he takes in hundreds of pieces  
15 of evidence all the time. So it frankly didn't occur to us  
16 that he was going to have any relevant testimony on that buccal  
17 swab.

18 THE COURT: OK.

19 MR. GREENFIELD: Judge, my problem with that  
20 explanation, they asked me for a stipulation in the chain of  
21 custody. I said no because I don't see a chain of custody.  
22 Show me the chain of custody.

23 THE COURT: When did that conversation happen?

24 MR. GREENFIELD: Two, three weeks before trial.

25 THE COURT: OK.

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1 MR. GREENFIELD: It's plain and simple. They should  
2 have then right then and there called up Newburgh and said is  
3 there a chain custody to this. We have the chain of custody  
4 for everything else in the case, where is the chain of custody  
5 as to this? And they would have gotten the same answer with  
6 them as with all those e-mails flying around Thursday and  
7 Friday.

8 The bottom line is, Judge, I would not have questioned  
9 that witness, Fredericks about the topic that I questioned him  
10 about if I knew there was a chain of custody. And now it bites  
11 me in the back. I didn't need that cross if I knew this  
12 existed. We should not bear the burden, and I would ask that  
13 that evidence be excluded.

14 MR. BAUER: If Mr. Greenfield is looking to strike the  
15 testimony of those few questions and his answers, that  
16 Detective Fredericks did not know anything about the buccal  
17 swab, we have no objection.

18 THE COURT: I don't think he's asking for that.

19 MR. BAUER: I know.

20 THE COURT: I think he's asking for the entire DNA  
21 evidence to be stricken.

22 MR. BAUER: Right. Judge, first of all, on the  
23 stipulation point, the stipulation, the thrust of the  
24 stipulation was we were trying to save the testimony of  
25 Detective Goodman, who is now going to be testifying, who took

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1 the buccal swab. So the thrust of the stipulation was a  
2 Newburgh Police Department officer took this swab and it went  
3 up to the lab. The thrust was not that we were representing in  
4 the stipulation every link in the chain of the chain of  
5 custody.

6 MR. GREENFIELD: We discussed the chain. We actually  
7 discussed the chain among ourselves when we talked about that.  
8 I said prove the chain and I'll give you the stipulation.

9 THE COURT: I guess my concern is, I mean clearly the  
10 government is correct that any particular gap in the chain of  
11 custody doesn't go to admissibility. It goes to weight. The  
12 concern that Mr. Greenfield has rightly highlighted, however,  
13 is the strategic decision he made on, let's call it the  
14 representation of the government that there would be no  
15 documentary evidence establishing the chain and that the  
16 government would attempt to establish the chain through  
17 testimony.

18 I do recall Mr. Greenfield's cross-examination of  
19 Officer Fredericks concerning the lack of a complete chain. So  
20 that is some matter of concern for the Court, that counsel,  
21 based on the government's representations, undertook a  
22 strategic decision which will apparently, if given the  
23 opportunity, be rebutted by the government's recent production  
24 of those documents.

25 As I sit here, I don't know what the right answer is.

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1 I am not inclined to strike the DNA evidence, but perhaps there  
2 is something short of that by way of precluding certain  
3 arguments on the part of the government. I don't know. I will  
4 have to think about that.

5 MR. GREENFIELD: Judge, one more little item to add to  
6 the mix as you are considering this. I am not blaming the wait  
7 on the government here. They probably made phone calls to  
8 Newburgh all along and asked for this or that. What I am  
9 pointing to is the fingerprints. We were told there was no  
10 fingerprint evidence of any consequence. They took the  
11 fingerprints and they got no results of any kind. Fredericks  
12 testified on the stand with regard to having three positive IDs  
13 of fingerprints. Again, we never got that. We should have  
14 gotten it. I'm pointing to the fact that they play fast and  
15 loose in Newburgh.

16 THE COURT: The fact that they've got three positive  
17 prints does not necessarily negate that they were of any  
18 relevance.

19 What can the government say in that regard? By the  
20 way it's, almost 9:30, so I do want to bring the jury out if  
21 they are here, but until they come out.

22 MR. BAUER: Judge, just on the fingerprints, the  
23 fingerprint hits I believe were all of persons who were not of  
24 interest to the investigation. So our representations are not  
25 inconsistent with the facts from that report. By the way, I do

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1 want to go back to the DNA. The representation that there was  
2 no chain of custody report we had, our representation was that  
3 we were going to prove the first and the last pieces of the  
4 chain and not the middle. So it still can be problematic in  
5 that we didn't have the document, but our representation wasn't  
6 that there was no report, that there was no other chain. It  
7 was simply we didn't know of it and we were going to offer the  
8 two ends of it.

9 THE COURT: We're waiting on one more juror. What  
10 does the government propose to do by way of the chain?

11 MR. BAUER: That is the thing about Mr. Greenfield's  
12 argument here today, nothing. The answer is nothing. Our  
13 strategy remains entirely the same. I frankly don't see any  
14 prejudice Mr. Greenfield experienced based on the later  
15 disclosure of this document.

16 MR. GREENFIELD: We certainly can't put the milk in  
17 the bottle that I expended on my cross-examination.

18 THE COURT: I suppose if the documents themselves are  
19 not evidence, then your arguments remain the same. I guess  
20 what you are arguing about is you weren't given the documents  
21 establishing the steps from collection through analysis.

22 MR. GREENFIELD: What I was given was the same  
23 document in the Henry Murray case.

24 THE COURT: I understand that.

25 MR. GREENFIELD: I expect if there was something in

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1 the buccal case, I would have gotten it. They are one number  
2 apart 266, 267 I believe.

3 THE COURT: OK.

4 MR. GREENFIELD: Why would I get it in one case and  
5 not the other. I think I have every right to believe that if  
6 it was out there they would have given it to me, just like they  
7 did he in Henry. And then when I said show me the chain, they  
8 told me two witnesses would testify. That is not good enough.

9 THE COURT: Apparently that's all that is going to  
10 happen. Two witnesses are going to testify and I think you  
11 will still have your argument.

12 MR. GREENFIELD: I don't know, Judge. If I see that  
13 chain in writing, that is an argument I might not pursue or an  
14 area of cross-examination I probably would not, most assuredly  
15 would not have pursued if I saw what purports to be a chain of  
16 custody to this evidence.

17 If it was turned over on October 7, it's sent to  
18 Albany December 21, then I abandon that line. I don't do it  
19 with Fredericks, I do it another way. I don't cross-examine  
20 him to the extent that I did on the subject.

21 MR. BAUER: Judge, as I said, our strategy with a  
22 number of the witnesses remains exactly the same. I will also  
23 underscore the point that Mr. Greenfield did know that that  
24 buccal swab was sent to the lab along with the ski mask. So he  
25 didn't have the report, but he knows it went up there. This is

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1 not a shocking development here, that at the time that the ski  
2 mask was sent up on December 21 that the buccal swab was sent  
3 the same day because those were the two items that were  
4 compared. So the shock and surprise that Mr. Greenfield has is  
5 a little surprising for us as well.

6 MR. GREENFIELD: Of course, I know they went up there  
7 on December 21. My question is and was during the  
8 cross-examination where was it from October 7 to December 21,  
9 not when it got to the laboratory. I want to know how many  
10 hands touched it, under what circumstances, and who had it and  
11 who touched it and where it went. That's what my  
12 cross-examination was, not that it got to Albany. I want to  
13 know how it got to Albany, in what condition, and how many  
14 people touched it before it got there.

15 THE COURT: OK.

16 Let's see where the jury is.

17 MR. GREENFIELD: Do we have a minute, Judge?

18 THE COURT: We'll see where the jury is, if the jury  
19 is ready? No.

20 MR. GREENFIELD: Can we do the tag team with my  
21 partner?

22 THE COURT: Sure. I take it, Mr. Goltzer, you are  
23 still on with -- actually we need the witness.

24 MR. GOLTZER: May I set up?

25 THE COURT: Yes, please.

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1 MR. GOLTZER: Yes, I'm still on cross, Judge.

2 THE COURT: You can hold Mr. Baynes.

3 MR. GREENFIELD: Still one?

4 THE COURT: Still one.

5 MR. GOLTZER: Judge, there is going to be an  
6 application without objection from the government to take  
7 judicial notice of a little piece of a transcript of an Orange  
8 County plea hearing, your Honor.

9 THE COURT: An Orange County?

10 MR. GOLTZER: Plea hearing.

11 THE COURT: Hold off, because we don't have a full  
12 jury yet.

13 I'll let you know.

14 (Pause)

15 THE COURT: The jury is here. Can you get Mr. Baynes.  
16 ANTHONY BAYNES, resumed.

17 THE COURT: Mr. Baynes, I am going ask you to please  
18 keep your voice up, OK?

19 THE WITNESS: All right.

20 MR. GOLTZER: Can you ask Mr. Baynes to say something  
21 so we can test the sound system to see if he's in the right  
22 position.

23 THE WITNESS: Good morning.

24 MR. GOLTZER: If you brought that a drop closer, you  
25 probably won't have to bend over as far.

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1 THE COURT: Except that it's too close.

2 MR. GOLTZER: Thursday was impossible.

3 THE COURT: Yes, it was very difficult.

4 (Continued on next page)

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(Jury present)

THE COURT: Good morning, all.

Please be seated. We will now continue with the cross-examination of Mr. Baynes by Mr. Goltzer.

Mr. Baynes, you are reminded that you are still under oath, OK?

THE WITNESS: Yes.

THE COURT: Louder.

THE WITNESS: Yes. Good morning.

CROSS EXAMINATION

BY MR. GOLTZER:

Q. Good morning, Mr. Baynes?

A. Good morning.

Q. Mr. Baynes, you do not have a written agreement with the federal government, do you?

A. No.

Q. The only plea agreement that you entered into was with the state authorities?

A. Yes.

Q. And that was the district attorney's office for Orange County?

A. Yes.

Q. And Newburgh is part of Orange County?

A. Yes.

Q. Is it true that you were provided with an opportunity to

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Baynes - cross

1 make a choice where you wanted to plead guilty?

2 A. Yes.

3 Q. And is it true that you still have that choice?

4 A. Yes.

5 Q. In fact, you were told by a prosecutor named -- Hoberman  
6 was it? Do you remember the name of the prosecutor?

7 A. No.

8 Q. Do you remember meeting with a prosecutor by the name of  
9 Haberman several times?

10 A. I don't remember his name.

11 Q. But you do remember meeting with a prosecutor?

12 A. Yes.

13 Q. And that was the same prosecutor who was present when you  
14 pled guilty?

15 A. Yes.

16 Q. And at the time you pled guilty, you were told on the  
17 record that if you could do better than the deal you made with  
18 Newburgh, you could plead guilty in the federal court and they  
19 would let you take your plea back like it never happened, isn't  
20 that true?

21 A. I don't remember. I don't think that's what happened.

22 Q. Do you deny that happened?

23 A. No. But I don't think it happened.

24 Q. Your Honor, without objection from the government and  
25 pursuant to Rule 201, I would ask the Court to take judicial

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Baynes - cross

1 notice of pages 3, line 21, through page 4, line 2, of the  
2 October 21, 2011 plea hearing. And I would request that that  
3 be admitted or deemed admitted and I could publish it to the  
4 jury?

5 THE COURT: Any objection?

6 MR. NAWADAY: No objection.

7 THE COURT: Very well, you can publish it to the jury.  
8 That will be admitted.

9 MR. GOLTZER: It's 3501-11 for the convenience of the  
10 government. Thank you, Judge.

11 Q. I am going to read to a few lines from that proceeding that  
12 are now in evidence. OK, Mr. Baynes?

13 A. OK.

14 Q. Beginning at page 3, line 21, by Mr. Haberman, I'm quoting:  
15 "There is one other matter. In case Mr. Baynes chooses  
16 voluntarily to be prosecuted by the United States Attorney for  
17 the same crimes, we would permit him after a plea to withdraw  
18 his plea here and allow him to be sentenced federally if he  
19 thought he could do better by that route rather than this."

20 Did you hear me read that?

21 A. Yes.

22 Q. Do you now remember that that's what happened?

23 A. No, I don't.

24 Q. Do you agree that if you and your lawyer decide you could  
25 plead guilty with these folks and take the plea back with those

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Baynes - cross

1 folks?

2 A. It's possible.

3 Q. Is it true or not?

4 A. I don't -- I don't remember. I didn't never hear that,  
5 but --

6 Q. Do you have memory problems?

7 A. No. But I never -- nobody never told me that.

8 Q. I beg your pardon?

9 A. Nobody never told me that.

10 Q. Do you remember being in a courtroom when that was said on  
11 the record out loud by Mr. Haberman?

12 A. No.

13 Q. You have no memory of that whatsoever?

14 A. No.

15 Q. Do you dispute that that happened?

16 A. No.

17 Q. But you haven't entered into an agreement with the  
18 prosecutors from the federal court?

19 A. No.

20 Q. And according to the deal you have -- well, let me start  
21 this way. You testified on Thursday that you committed how  
22 many robberies?

23 A. Around 10.

24 Q. Huh?

25 A. Around 10.

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Baynes - cross

1 Q. Around 10? Didn't you say six?

2 A. I said around. I never said a number.

3 Q. You said around six?

4 A. Around, yeah.

5 Q. Was it six or ten, Mr. Baynes?

6 A. It's around that number.

7 Q. Around how many?

8 A. Around six. In between six and ten.

9 Q. In between six and ten?

10 A. Yes.

11 Q. Could it have been more than ten?

12 A. No, it's around, like around six, it's not more than ten.

13 Q. Do you actually have a recollection of how many robberies  
14 you have committed in your life or not?

15 A. No.

16 Q. You do not?

17 A. Not all of them.

18 Q. You don't remember all of the robberies you've committed?

19 A. I would have to sit and think about all of them, but it's  
20 not that many.

21 Q. You have been interviewed by the government, between the  
22 state government and the federal government, you have been  
23 interviewed how many times, if you remember?

24 A. Around like 25, 30.

25 Q. You sat through 25 or 30 interviews with agents and

e8bnchr1

Baynes - cross

1 prosecutors?

2 A. Yes.

3 Q. And each of those interviews involved some number of hours?

4 A. Yes.

5 Q. And some of them were an hour?

6 A. I don't know. I guess, yes.

7 Q. You're guessing?

8 A. I don't know specifically how long they was.

9 Q. Could some of them have been half a day?

10 A. They were only for hours. Hours.

11 Q. I beg your pardon?

12 A. Hours, hours.

13 Q. How many hours?

14 A. I don't know. They was hours, though.

15 Q. Did you ever spend three or four hours with prosecutors and  
16 agents?

17 A. Could have, yes.

18 Q. Do you remember?

19 A. No, I wasn't looking at the time before I went or after I  
20 left.

21 Q. Did you spend a hundred hours preparing for your testimony  
22 in this courtroom?

23 A. I -- no. No.

24 Q. I beg your pardon?

25 A. No.

e8bnchr1

Baynes - cross

1 Q. Can you estimate for this jury, without guessing, but an  
2 estimate, how many hours you spent preparing for your testimony  
3 before this jury?

4 A. I don't -- no.

5 Q. Did you have occasion to answer the questions that you were  
6 asked on Thursday by the prosecutor in the office?

7 A. Yes.

8 Q. How many times were you asked those questions?

9 A. Probably once or twice.

10 Q. How many times did you answer those questions?

11 A. Once or twice.

12 Q. So before you came to court before this jury you were told  
13 the specific questions that you were going to be asked by the  
14 prosecutor?

15 A. Yes.

16 Q. And you told them the answers that you were going to give  
17 them?

18 A. Yes.

19 Q. And can you tell the jury in any way how often it was that  
20 you prepared for that? Of the 25 or 30 times, how many of  
21 those meetings happened before you went through your direct  
22 testimony with the prosecutors?

23 A. Like four.

24 Q. How many?

25 A. Like four, like four.

e8bnchr1

Baynes - cross

1 Q. All right.

2 A. Like, yeah, like around four.

3 Q. Around four?

4 A. Four.

5 Q. How many times did you meet with the Orange County  
6 prosecutor?

7 A. I don't know.

8 Q. How many times did you meet with the federal prosecutors?

9 A. Like probably -- I don't know. It's around -- they like  
10 split up, like half and half.

11 Q. Half and half?

12 A. Yes.

13 Q. Was it always the same prosecutors for the state?

14 A. Yes.

15 Q. Was it always the same prosecutors for the federal  
16 government, or did they change?

17 A. They changed.

18 Q. Do you remember the names of the any of the prosecutors?

19 A. No. I just know it was a female.

20 Q. What was the name of the prosecutor in the state case?

21 A. I don't remember.

22 Q. Did you just hear me say the name Haberman?

23 A. Yes.

24 Q. Did you hear me read what Mr. Haberman said in the  
25 courtroom?

e8bnchr1

Baynes - cross

1 A. Yes.

2 Q. Were you unable to remember the name Haberman from the time  
3 I read it about ten minutes ago until now?

4 A. No.

5 Q. You didn't remember the name, did you?

6 A. Yeah, I remember the name, but you said two names at first.  
7 I didn't --

8 Q. Did you ever have a fight with Bow Wow?

9 A. No.

10 Q. When you were being interviewed by Mr. Haberman on May 13,  
11 2011 in Orange County, did you ever tell him that you had  
12 previously, or before, you had had a fight with Bow Wow?

13 A. No.

14 Q. You deny that?

15 A. Yes.

16 Q. The fight you had was with Bash?

17 A. Yes.

18 Q. Now you are not sure how many robberies you've committed?

19 A. A rounded number, though. Around -- I know a rounded  
20 number.

21 Q. How many robberies have you committed in your life with  
22 Quay Quay?

23 A. One, one or two.

24 Q. Just one or two?

25 A. Yes.

e8bnchr1

Baynes - cross

1 Q. Could it have been more?

2 A. No.

3 Q. You were part of a group that committed a number of  
4 robberies or muggings of people for change and money in  
5 Newburgh, weren't you?

6 A. No.

7 Q. Wasn't Quay Quay part of that group?

8 A. Yes.

9 Q. Quay Quay was part of a group that you committed robberies  
10 with in Newburgh when you were 16 and 17 years old, right?

11 A. Yes.

12 Q. Do you recall committing approximately ten chain snatch  
13 robberies?

14 A. No.

15 Q. Did you tell the federal authorities, namely, an attorney,  
16 a U.S. attorney by the name of Rebecca Mermelstein on May 7,  
17 2012, during a proffer session that you recalled committing  
18 approximately ten chain-snatch robberies in the past -- forgive  
19 me -- I'll try and say it three times fast. Ten chain-snatch  
20 robberies?

21 A. No.

22 Q. You deny saying that?

23 A. Yes.

24 Q. When you were interviewed, do you remember a female U.S.  
25 attorney by the name of Mermelstein?

e8bnchr1

Baynes - cross

1 A. Yes.

2 Q. Was there an agent in the room at the same time?

3 A. Yes.

4 Q. What was his name or her name?

5 A. I don't remember.

6 Q. Do you see that agent in court?

7 A. No. It was --

8 Q. What was the name of your lawyer who was present at that  
9 interview?

10 A. A. J..

11 Q. What?

12 A. A.J.

13 Q. I couldn't understand that?

14 A. A.J. A.J.

15 Q. The name of your lawyer was?

16 A. At that time it was a lawyer A.J.

17 Q. A.J.?

18 A. Yes, the same state lawyer.

19 Q. You ever hear the name Paul Rinaldo?

20 A. Yes.

21 Q. Who is Paul Rinaldo?

22 A. My lawyer now.

23 Q. Your federal lawyer?

24 A. Yes.

25 Q. Was he at that meeting?

e8bnchr1

Baynes - cross

1 A. Not at those -- no, he didn't come until later.

2 Q. He wasn't there on May 7, 2012?

3 A. I don't know that date, but he was -- at first my state  
4 lawyer was at the meetings.

5 Q. When you were 16 years of age, were you part of a group  
6 that robbed a chain necklace from randomly selected victims?

7 A. That's not -- we did that, but that is not what we -- yeah,  
8 I guess you could say yes.

9 Q. You guess?

10 A. Yes.

11 Q. Don't you know?

12 A. No, I know. I say yes, yes.

13 Q. The answer is yes, isn't it?

14 A. Yes.

15 Q. And the others who committed the robberies with you were  
16 Laquavious Boykin, also known as Quay Quay, is that right?

17 A. Yes.

18 Q. James?

19 A. Yes.

20 Q. And Darryl Roberts?

21 A. I don't know who that is.

22 Q. Was there a robbery that occurred at Fullerton and  
23 Broadway?

24 A. Not that I remember.

25 Q. Did you tell Rebecca Mermelstein on May 7, 2012 that there

e8bnchr1

Baynes - cross

1 was a robbery at Fullerton and Broadway?

2 A. Not that I remember.

3 Q. Did you tell hear that James snatched the chain?

4 A. Yes. That is by my house.

5 Q. Did you tell her that you received \$300 from a pawn shop?

6 A. Yes, around my house that was. That was by my house.

7 Q. Do you remember that robbery now?

8 A. It was by my house. It wasn't by Fullerton and Broadway.

9 Q. Did you tell her it was at Fullerton?

10 A. No.

11 Q. But you remember a robbery near your house where those  
12 things happened?

13 A. Yes.

14 Q. Could have been confused about the location of the robbery?

15 A. No.

16 Q. In the spring of 2010, while you were walking down Mill  
17 Street in Newburgh, were you there when James snatched the  
18 chain from your neighbor?

19 A. Yes.

20 Q. Did you know your neighbor?

21 A. No, not really, no.

22 Q. Did you know it was your neighbor?

23 A. Yeah, I seen him before, but I don't know him.

24 Q. And he had seen you before?

25 A. Yes.

e8bnchr1

Baynes - cross

1 Q. Did you tell Mr. James, That's my neighbor, leave him  
2 alone?

3 A. No, he was running.

4 Q. Did you tell Mr. James, Don't rob him, he can identify me?

5 A. He took it, but I told him -- it happened too quick. He  
6 took it and ran.

7 Q. Did you split the proceeds with him?

8 A. Yes.

9 Q. Because you were part of the group?

10 A. Not -- it was because we was close. It was just because we  
11 was close.

12 Q. You were close to James?

13 A. It had nothing to do with the group.

14 Q. You were close to James?

15 A. Yes.

16 Q. You were close to Quay Quay?

17 A. Yes.

18 Q. And you were present during that robbery?

19 A. Yes.

20 Q. But you had nothing to do with it?

21 A. No.

22 Q. But you took the money anyway?

23 A. Yes.

24 Q. While you were at a party in Vails Gate, New York, there  
25 was a fight and a chain fell off of somebody, is that right?

e8bnchr1

Baynes - cross

1 A. Yes.

2 Q. And Houston Brown and you decided to steal it?

3 A. Yes.

4 Q. And you did, didn't you?

5 A. Yes.

6 Q. Were you involved in a robbery during the summer of 2010 on  
7 Carson Street in Newburgh?

8 A. I don't know if that's the date, but I was involved in a  
9 robbery on Carson Street, yes.

10 Q. You were?

11 A. Yes.

12 Q. That was with Quay Quay? Did you tell Mermelstein that it  
13 was Quay Quay and James? Yes or no, if you remember?

14 A. No.

15 Q. You didn't tell her that?

16 A. No.

17 Q. Did it involve a big chain?

18 A. No.

19 Q. Did you tell her it involved a big chain?

20 A. No.

21 Q. Did you tell her that the victim chased James?

22 A. No.

23 Q. Did the victim chase James?

24 A. No.

25 Q. Did Edwin Cortez punch the victim?

e8bnchr1

Baynes - cross

1 A. No.

2 Q. Did you tell her that Edwin Cortez punched the victim?

3 A. No.

4 Q. Now, the chain robberies that you were involved in usually  
5 involved Mexican victims, is that correct?

6 A. Not really. It was just, the Spanish -- the Spanish -- my  
7 next door neighbor was the only Spanish person.

8 Q. Didn't you tell Mermelstein when notes were being taken  
9 that your chain robberies usually involved Mexicans?

10 A. I don't know what you are saying. I said the robberies  
11 usually involved Mexicans, not chain. That was the only chain  
12 that we took from a Spanish person.

13 Q. Is it accurate to say that you usually targeted Mexicans?

14 A. For chains, no.

15 Q. For anything?

16 A. Yes.

17 Q. Why?

18 A. I don't know.

19 Q. Why did you pick on Mexicans?

20 A. I don't know.

21 Q. Can you think of any reason why you decided to pick on  
22 Mexicans?

23 A. I didn't -- I don't -- I didn't -- I don't know.

24 Q. Do you like Mexicans or not like Mexicans?

25 A. Yes. I'm not racist or -- yes, I like Mexicans, but --

e8bnchr1

Baynes - cross

1 Q. But you rob Mexicans?

2 A. What?

3 Q. You rob Mexicans?

4 A. No, I was only --

5 Q. Why did you pick Mexicans to rob as opposed to some other  
6 group?

7 A. We robbed a lot of people. We robbed drug dealers, black  
8 drug dealers, anybody.

9 Q. Who did you rob? You robbed drug dealers?

10 A. Yes.

11 Q. You robbed black people?

12 A. Yes.

13 Q. You robbed white people?

14 A. No.

15 Q. Do you like white people enough that you don't rob them?

16 MR. NAWADAY: Objection.

17 THE COURT: Sustained.

18 Q. You robbed Latino people?

19 A. Yes.

20 Q. But why did you tell Mermelstein that you picked on Mexican  
21 people?

22 A. I said we robbed Mexican people. We robbed Mexicans, we  
23 robbed black people.

24 Q. Did you rob the Mexicans because what you you thought they  
25 were illegal and wouldn't go to the police?

e8bnchr1

Baynes - cross

1 A. No.

2 Q. Did you rob Mexicans because they were smaller than you?

3 A. No.

4 Q. Why did you rob Mexicans? Why did you pick them out?

5 A. Just did.

6 Q. You can't think of a reason?

7 A. It was just -- they're deal -- like the street I lived on,  
8 there was a lot of them.

9 Q. What?

10 A. The street that I lived on, where I lived, around, there  
11 was a lot of them.

12 Q. Was --

13 A. A lot of Spanish people.

14 Q. Strange people?

15 A. Spanish, Spanish.

16 Q. So you committed robberies on the street where you lived?

17 A. Not on my, but around my street.

18 Q. You just said that the people --

19 A. I said around where I live there's a lot of Spanish people.

20 Q. You stole cell phones, too, didn't you?

21 A. Not like -- I picked up cell phones.

22 Q. You used to go to basketball games when guys were playing  
23 ball in the neighborhood, right?

24 A. Yes.

25 Q. And the guys who were playing basketball didn't want to

e8bnchr1

Baynes - cross

1 break their cell phones, so they would put them down on the  
2 side of the court?

3 A. Yes.

4 Q. And you would sneak over there and steal the phones --

5 A. No.

6 Q. -- and sell them for \$60?

7 A. No.

8 Q. How did you steal the cell phones?

9 A. The time everybody left the court and there was a cell  
10 phone there, I just took it.

11 Q. You would sell them for \$60 apiece, wouldn't you?

12 A. For random prices.

13 Q. I'm sorry?

14 A. For random prices.

15 Q. I can't hear you.

16 A. Random prices.

17 Q. Did you tell Mermelstein at the same proffer session on May  
18 7, 2012, that you sold them for \$60 a piece to corner stores in  
19 Newburgh and that the store was on Broadway and Dubois. Did  
20 you tell her that?

21 A. I told her that we sold cell phones, but it was all random,  
22 like random prices.

23 Q. You didn't tell her \$60?

24 A. No.

25 Q. You didn't tell her where the store was?

e8bnchr1

Baynes - cross

1 A. That phone there I probably got for \$60, but --

2 Q. You told weed sometimes, didn't you?

3 A. Not really. I tried to sell weed, but I smoked it. I  
4 never sold weed.

5 Q. Did you get your supply of weed from Lander street on one  
6 occasion?

7 A. I don't remember.

8 Q. Did you tell Mermelstein at the same proffer, on May 7,  
9 2012, that you got weed from someone known as C?

10 A. Yes.

11 Q. So you had a supplier for weed?

12 A. No, he was just a random person, like a random person I  
13 would go to.

14 Q. You would buy an eighth of an ounce for 40 or 50 dollars?

15 A. Yes.

16 Q. And you would sell dime bags?

17 A. I tried -- I never -- I never really sold, but I tried to.

18 Q. But you smoked it?

19 A. Yes.

20 Q. Did smoking in any way affect the way you saw things,  
21 perceived things?

22 A. No.

23 Q. So the fact that you smoked five or ten or more joints a  
24 day didn't affect your mind in any way?

25 A. No.

e8bnchr1

Baynes - cross

- 1 Q. Do you know what a blunt is?
- 2 A. Yes.
- 3 Q. What is a blunt?
- 4 A. A rolled-up weed.
- 5 Q. It is not a joint?
- 6 A. No.
- 7 Q. It's bigger?
- 8 A. Yes.
- 9 Q. You do blunts?
- 10 A. Yes.
- 11 Q. How many blunts in a day?
- 12 A. I don't know. Around 5.
- 13 Q. A blunt is about the size of a cigar?
- 14 A. Yes, but not as fat.
- 15 Q. What?
- 16 A. Not as fat as a cigar.
- 17 Q. It's as fat as a cigar?
- 18 A. Not as fat.
- 19 Q. So it's like a small cigar?
- 20 A. Yes.
- 21 Q. You committed some burglaries, didn't you?
- 22 A. Yes.
- 23 Q. You say you committed two burglaries?
- 24 A. I said around two.
- 25 Q. Two. Could it have been more?

e8bnchr1

Baynes - cross

1 A. Two or three, not a lot.

2 Q. Do you remember whether it's two or whether it's three?

3 A. I remember, I remember three. I remember three.

4 Q. You just said that's not a lot?

5 A. It depends on who's looking at it.

6 Q. One burglary is a lot for the victim, isn't it?

7 A. Yes.

8 Q. One of the burglaries involved the mother of a girl that  
9 somebody knew?

10 A. Yes.

11 Q. Do you remember the girl's name?

12 A. No.

13 Q. Who knew her?

14 A. G.

15 Q. Who?

16 A. Somebody named G.

17 Q. Jay?

18 A. G.

19 Q. G?

20 A. Yes.

21 Q. Do you know if G was dating her?

22 A. Yes.

23 Q. Was it G's girlfriend?

24 A. Yes.

25 Q. And G was somebody who knew this mother?

e8bnchr1

Baynes - cross

1 A. I don't know. I guess.

2 Q. And G decided that you guys were going to go into that  
3 house?

4 A. Yes.

5 Q. G's girlfriend's mother's house?

6 A. Yes.

7 Q. Did you say to G, it is your girlfriend's mother. Why do  
8 you want to do that?

9 A. No.

10 Q. Did you say to G, let's pick somebody else?

11 A. No.

12 Q. Why not?

13 A. No reason.

14 Q. Did you think it was wrong to rip off his girlfriend's  
15 mother?

16 A. Yes.

17 Q. What?

18 A. Yes.

19 Q. Did you care?

20 A. No.

21 Q. Did you think it was wrong to rob chains off of people's  
22 necks?

23 A. Yes.

24 Q. Did you care?

25 A. No, not at the time.

e8bnchr1

Baynes - cross

1 Q. You were able to make four or five hundred dollars a week  
2 selling drugs, right?

3 A. Not every week. Yes, I guess, yes.

4 Q. Did you ever have a legitimate job?

5 A. A summer job.

6 Q. What job did you have?

7 A. A summer job at a summer camp.

8 Q. What did you do?

9 A. Watched kids.

10 Q. Did you ever look for work?

11 A. After that job?

12 Q. In the winter.

13 A. No.

14 Q. After you got thrown out of school, did you ever look for a  
15 job?

16 A. No.

17 Q. Are you physically healthy?

18 A. Yes.

19 Q. Are you able to do physical labor?

20 A. Yes.

21 Q. Are you able to do honest work?

22 A. Yes.

23 Q. Did you ever do honest work other than working at a camp?

24 A. No.

25 Q. Why not?

e8bnchr1

Baynes - cross

1 A. I was young, I just --

2 Q. You were young?

3 A. Yes.

4 Q. When you were young you stole things that didn't belong to  
5 you?

6 A. Yes.

7 Q. You knew that people had worked to buy those things?

8 A. Yes.

9 Q. The girl's mother, what did you steal? A laptop?

10 A. Yes.

11 Q. Did it occur to you that maybe her personal information was  
12 on that laptop and she needed it?

13 A. Yes.

14 Q. Didn't stop you, though?

15 A. No.

16 Q. You sold the laptop?

17 A. Yes.

18 Q. What else did you steal?

19 A. Out of the house?

20 Q. What?

21 A. Out of the house?

22 Q. Yes.

23 A. Cell phones, iPods, her car.

24 Q. Her car?

25 A. Yes.

e8bnchr1

Baynes - cross

1 Q. You joy rided the car?

2 A. Yes.

3 Q. And this was somebody that G knew?

4 A. Yes.

5 Q. And somebody that was related to somebody that he liked?

6 A. Yes. It was his girl's house, too.

7 Q. It was his girl's house, too?

8 A. Yes.

9 Q. Did you see anything wrong with that?

10 A. Yes.

11 Q. Did you feel bad about it?

12 A. No, not at the time.

13 Q. You felt bad about it at the time?

14 A. I said, no, not at the time.

15 Q. Then you committed a burglary at the Mullins apartments,  
16 right?

17 A. Yes.

18 Q. You stole an Xbox? Laptop?

19 A. Yes.

20 Q. You used to ride around in people's cars that didn't belong  
21 to you?

22 A. Yes.

23 Q. Didn't care if they had to be at work the next morning?

24 You would leave the car somewhere off where nobody could find  
25 it?

e8bnchr1

Baynes - cross

1 A. Yes.

2 Q. You were involved in 30 assaults?

3 A. Around 30.

4 Q. Around 30. Could it have been more than 30?

5 A. Yes.

6 (Continued on next page)

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E8b9chr2

Baynes - cross

- 1 Q. Used weapons?
- 2 A. No. No.
- 3 Q. No?
- 4 A. Sticks.
- 5 Q. What kind of sticks?
- 6 A. Like a random stick I pick up.
- 7 Q. How tall are you?
- 8 A. Around five-eleven.
- 9 Q. How much do you weigh?
- 10 A. 220.
- 11 Q. How much did you weigh back in 2010?
- 12 A. Same.
- 13 Q. 220?
- 14 A. Yes.
- 15 Q. You can hurt somebody, hitting them with a stick?
- 16 A. Yes.
- 17 Q. Did you ever hurt anybody?
- 18 A. Yes.
- 19 Q. What?
- 20 A. Yes.
- 21 Q. How many people have you hurt?
- 22 A. (No response).
- 23 Q. Do you know?
- 24 A. No.
- 25 Q. Do you care?

E8b9chr2

Baynes - cross

1 A. At the time I didn't.

2 Q. Didn't care who you hurt? Didn't care who you hurt?

3 A. At the time I didn't.

4 Q. Do you care now?

5 A. Yes.

6 Q. You've changed?

7 A. Yes, I guess, yes.

8 Q. You're a better person?

9 A. Yeah.

10 Q. What?

11 A. Yes. Yes.

12 Q. Have you ever helped James Cooper deal crack?

13 A. Who?

14 Q. James Cooper?

15 A. No.

16 Q. Do you know the name James Cooper?

17 A. Yes.

18 Q. Who is James Cooper?

19 A. My mom old boyfriend.

20 Q. Did you deal crack with James Cooper?

21 A. No.

22 Q. Did you help him deal crack?

23 A. No.

24 Q. Did you tell Rebecca Mermelstein on May 7, 2012 that you  
25 helped James Cooper deal crack approximately five times?

E8b9chr2

Baynes - cross

1 A. No.

2 Q. Did customers call you in an effort to get ahold of this  
3 fellow, James Cooper?

4 A. Yes, sometimes.

5 Q. Were you in a car with James Cooper when Cooper delivered  
6 crack?

7 A. Yes.

8 Q. Why?

9 A. Just with him.

10 Q. You needed some place to be?

11 A. No. I could have been anywhere I just was hanging with  
12 him.

13 Q. You just decided to be with somebody who was dealing crack?

14 A. He wasn't going out to deal crack. He was handing it to  
15 somebody.

16 Q. So he was handing it to somebody that would sell for him?

17 A. No.

18 Q. You told Mermelstein that you helped him deal crack, didn't  
19 you?

20 A. No.

21 Q. You deny saying it?

22 A. Yes.

23 Q. You deny doing it?

24 A. I never -- I -- if somebody called me I told them to call  
25 his number and I get him -- or I be with him sometimes while he

E8b9chr2

Baynes - cross

1 was but I never helped him or anything.

2 Q. We just went through a number of crimes that you committed;  
3 is that correct?

4 A. Yes.

5 Q. We went through a couple of burglaries?

6 A. Yes.

7 Q. By the way, the third burglary, what was in that about?

8 A. (No response).

9 Q. If you remember?

10 A. What do you mean, what was it about?

11 Q. You said you committed three burglaries.

12 A. Yes.

13 Q. I went through two of them with you.

14 A. The third one.

15 Q. I went through the one with G's girlfriend, right?

16 A. Yes.

17 Q. And I went through the one where you took the Xbox?

18 A. In the Mullins, yes.

19 Q. What was the third burglary you did, if you remember?

20 A. It was in the Kenneys too.

21 Q. What?

22 A. In the Kenneys.

23 Q. When?

24 A. I don't know when.

25 Q. Can you remember the year?

E8b9chr2

Baynes - cross

1 A. '09.

2 Q. Are you sure?

3 A. No.

4 Q. Could have been a different year?

5 A. Could have been '09 or '010.

6 Q. Can you remember the month?

7 A. No.

8 Q. Can you remember the time of day?

9 A. Night.

10 Q. Because you only do burglaries at night, right?

11 A. Yes.

12 Q. When people are sleeping in their houses?

13 A. Yes.

14 Q. What would you do if somebody woke up?

15 A. Hide.

16 Q. What?

17 A. Hide.

18 Nobody ever woke up.

19 Q. Did you ever think you'd have to hurt somebody in their  
20 house?

21 A. No.

22 Q. Somebody who committed more than 30 assaults, you would  
23 have hurt somebody if they woke up, wouldn't you?

24 A. Just run away. Just run out.

25 Q. Would you hurt somebody to keep from going to jail?

E8b9chr2

Baynes - cross

1 A. No.

2 Q. Would you lie to keep from going to jail?

3 A. No.

4 Q. Would you lie to get property in 2009?

5 A. Lie to get property?

6 Q. Yeah. Would you trick somebody, tell them -- make a  
7 promise to them that you wouldn't keep?

8 A. I don't know.

9 Q. Did you ever sell bad crack?

10 A. Yes.

11 Q. How many times did you sell bad crack?

12 A. A few.

13 Q. What's a few?

14 A. Around five times.

15 Q. Around five times.

16 Aren't you just making up a number?

17 A. Yeah. Around.

18 Q. You just made up a number five, right?

19 A. Yes. Around though. It's around that amount of times.

20 Q. The question is --

21 A. I made up a number around the times sold crack.

22 Q. You just made up a number in response to my question,  
23 correct?

24 A. Yes.

25 Q. Do you understand that you're in a federal courtroom?

E8b9chr2

Baynes - cross

1 A. Yes.

2 Q. Do you understand that you've taken an oath to tell the  
3 truth?

4 A. Yes.

5 Q. Do you understand that when I ask you a question you have  
6 to give me an honest answer?

7 A. Yes.

8 Q. Do you understand that this jury has to rely on your  
9 testimony in a murder case?

10 A. Yes.

11 Q. And you're making up answers?

12 A. I didn't -- I said around the time -- around --

13 Q. Did you just tell this jury you made up an answer?

14 A. I said I made around the time -- around the numbers of --  
15 that I committed.

16 Q. Did you just agree with me that you made up an answer five?

17 A. I said I made up an answer around the numbers of times I  
18 sold crack.

19 Q. You've been asked questions about the number of robberies  
20 you committed?

21 A. Yes.

22 Q. On Thursday you said it was around six?

23 A. Yes.

24 Q. Today you said it was around six to ten?

25 A. Yes.

E8b9chr2

Baynes - cross

1 Q. Then you said it was around ten?

2 A. No. I said it was around six to ten.

3 Q. Did you make up those answers too?

4 A. It's around the number.

5 Q. Did you make up those answers also?

6 A. I don't know the exact number. I'm telling --

7 Q. Wouldn't the honest answer be: I don't know how many  
8 robberies I committed?

9 A. Yes.

10 Q. Wouldn't the honest answer be: I don't know how many times  
11 I sold drugs?

12 A. Yes.

13 Q. Wouldn't the honest answer be; I don't know how many houses  
14 I burglarized?

15 A. Yes.

16 Q. The government didn't tell you to make up answers?

17 A. No.

18 Q. The government told you you had to tell the truth?

19 A. Yes.

20 Q. And can we agree that making up answers isn't the truth?

21 A. I'm not making up answers. I'm saying around so you'll  
22 know around the number.

23 Q. Do you think they're going to tear up your agreement after  
24 you finish testifying today?

25 A. I don't know.

E8b9chr2

Baynes - cross

1 Q. Do you still think you're going to get time served after  
2 testifying today?

3 A. I don't know.

4 Q. You're still hoping to get time served after testifying  
5 today.

6 A. Yeah.

7 Q. With respect to any of the robberies that you committed in  
8 Orange County, have you ever been asked to plead guilty to one  
9 of them, the chain snatches?

10 A. No -- yeah. Yes.

11 Q. You haven't pled guilty to one chain snatch robbery?

12 A. Yes, I have.

13 Q. What chain snatch robbery did you plead guilty to?

14 A. Right -- during this case -- it was a petty -- it dropped  
15 to a petty larceny.

16 Q. That wasn't a chain snatch. Somebody died in the robbery  
17 you committed?

18 A. No. I'm talking before I pled guilty to this.

19 Q. Yes. As a matter of fact in this case, in Orange County,  
20 you never pled guilty to killing Mr. Henry, did you?

21 A. No.

22 Q. You never pled guilty to robbing Mr. Henry, did you?

23 A. I did.

24 Q. You never pled guilty to it?

25 A. I pled guilty to robbery.

E8b9chr2

Baynes - cross

1 Q. You pled guilty to robbing somebody else and taking  
2 something from him, didn't you?

3 A. I just pled guilty to robbery.

4 Q. To robbing somebody else and injuring somebody else.

5 You never pled to the Henry murder, did you?

6 A. I -- I just pled guilty to robbery. I don't -- not to a  
7 specific person.

8 Q. Under the terms of your plea agreement with Orange County  
9 even if you breach the agreement they will never prosecute you  
10 for the murder, will they?

11 A. No.

12 Q. They will recommend 17 years even if you lie through your  
13 teeth in this courtroom, won't they?

14 A. (No response).

15 Q. That's the promise they made to you, isn't it?

16 A. Yes.

17 Q. You won't even face the maximum penalty of 25 years if you  
18 lie through your teeth to this jury, will you?

19 A. No.

20 Q. And you've not been asked to plead guilty in a federal  
21 courtroom to any of the crimes that those three men are charged  
22 with, have you?

23 A. No.

24 Q. And you never will be, will you?

25 A. I don't know.

E8b9chr2

Baynes - cross

1 Q. I just asked you about a bunch of chain snatches. Do you  
2 remember that?

3 A. Yes.

4 Q. Have you been asked to plead guilty to one chain snatch?

5 A. (No response).

6 Q. Of the ones other than December 15, have you pled guilty to  
7 one chain snatch?

8 A. One, yes.

9 Q. That's the one in this case?

10 A. No.

11 Q. When did you plead guilty?

12 A. I pled guilty to -- a petty larceny case like -- like a  
13 week or two before I pled guilty to this case.

14 Q. Petty larceny is a misdemeanor?

15 A. But it was a chain snatching too.

16 Q. A misdemeanor, right?

17 A. Yes.

18 Q. You've committed maybe ten or more chain snatches. Did you  
19 plead guilty to those ten robberies?

20 A. No.

21 Q. You know that a robbery is stealing property with the use  
22 of force, right?

23 A. I don't know.

24 Q. You don't know what a robbery is?

25 A. Yeah. I know what a robbery is. I didn't know that it

E8b9chr2

Baynes - cross

1 was --

2 Q. How many robberies did you commit that you haven't pled  
3 guilty to?

4 A. Um around --

5 Q. According to your plea agreement which is in evidence --

6 MR. GOLTZER: May I publish it to the jury, Judge,  
7 parts of it?

8 THE COURT: Any objection? Is it in evidence?

9 MR. NAWADAY: It is in evidence.

10 THE COURT: Yes. You may publish it.

11 MR. GOLTZER: Thank you so much.

12 I withdraw that. Forgive me. I'm not going to do  
13 that. Mr. Greenfield will cover that.

14 BY MR. GOLTZER:

15 Q. The burglaries, did you ever plead guilty to a burglary?

16 A. No.

17 Q. Thirty assaults. Were you ever asked to plead guilty to  
18 any of the assaults you committed?

19 A. No.

20 Q. Do you remember who you assaulted?

21 A. Some of them, yes.

22 Q. There are some you don't remember?

23 A. Yes.

24 Q. There are some you couldn't even describe?

25 A. Yes.

E8b9chr2

Baynes - cross

1 Q. Do you remember testifying here on Thursday to  
2 conversations that you had in the hospital with the police?

3 A. Yes.

4 Q. By the way, you remember I asked you about being present at  
5 a hearing in Newburgh when the subject of your -- of the  
6 hearing was the statements you made to the police at the  
7 hospital?

8 A. Yes.

9 Q. And were you there?

10 A. Yes.

11 Q. Not with Mr. Rinaldo, with a different lawyer?

12 A. Yes.

13 Q. And you told us you heard what everybody said?

14 A. Yes.

15 Q. Did you hear a detective testify by the name of Cortez?

16 A. A detective did testify, yeah.

17 Q. He did?

18 A. Yes.

19 Q. Now, you know that you took an oath to tell the truth here?

20 A. Yes.

21 Q. Right?

22 A. Yes.

23 Q. And you know that if you lie about something important it  
24 can be a crime?

25 A. Yes.

E8b9chr2

Baynes - cross

1 Q. And you know that whoever testifies has to take the same  
2 oath, right?

3 A. Yes.

4 Q. So that when different police officers testified at your  
5 hearing they put their hands on a Bible, right?

6 A. I don't know.

7 Q. Well they raised their hand?

8 A. Yes.

9 Q. They swore to tell the truth?

10 A. Yes.

11 Q. The whole truth, right?

12 A. Yes.

13 Q. And nothing but the truth, right?

14 A. Yes.

15 Q. Did you hear Detective Cortez say -- I'm not offering it  
16 for the truth -- did you hear Detective Cortez say that he gave  
17 you Miranda warnings?

18 A. No.

19 Q. You deny that?

20 A. (No response).

21 Q. That he said it at a hearing?

22 A. Yes. He did say that. He did say that.

23 Q. In fact, you were there and he said that he asked you if  
24 you understood each of the rights, correct?

25 A. No. He didn't.

E8b9chr2

Baynes - cross

1 Q. He didn't testify to that?

2 A. Yeah, yeah, he -- yes, he testified to that.

3 Q. What did he testify to?

4 A. He said that -- he said that he read me my rights.

5 Q. Now you told us -- and he asked you if you understood,  
6 right? He asked you if you understood? That's what he  
7 testified to?

8 A. Yes.

9 Q. And he said you said yes?

10 A. Yes.

11 Q. To each of those questions?

12 A. Yes.

13 Q. And he testified under oath that you signed that paper?

14 A. Yes.

15 Q. And Thursday you told us that never happened?

16 A. I never signed the paper. Yes.

17 Q. Are you saying to this jury that Detective Cortez committed  
18 the felony of perjury by lying under oath about you?

19 A. Yes.

20 Q. You also testified on Thursday, did you not, that you were  
21 questioned by the police in the hospital for hours and hours,  
22 right?

23 A. Yes.

24 Q. And the prosecutor asked you what you remembered. And all  
25 you could remember was that you said you went in to buy weed

E8b9chr2

Baynes - cross

1 you got robbed and stabbed; is that right?

2 A. Yes.

3 Q. Now, it's been three days since you gave that testimony.

4 Can you remember anything else that you told the police during  
5 all of those hours of questioning while they were taking notes?

6 A. Yes.

7 Q. What else do you remember?

8 A. Seeing what gun Baby E and Bash had. Changing up my story  
9 once they said that they had cameras of me walking down -- I  
10 mean me -- of the street that I said I was walking down. And  
11 changing up my story after that that the person that they said  
12 stabbed me was inside the house.

13 Q. Did you tell them -- now, the questions I'm about to ask  
14 you involve all the time you were in the hospital being  
15 questioned by police, okay?

16 A. Yes.

17 Q. I'm not asking you to separate night, day, but all the  
18 hours, all right?

19 A. Yes.

20 Q. Did you, Laquavious, Raymond, Baby, and Bash and a bunch of  
21 unknown people walk past 54 Chambers Street to Dubois Street?

22 A. No.

23 Q. Did you on December 15, 2010 at St. Luke's Hospital tell  
24 that to the police?

25 A. I don't remember.

E8b9chr2

Baynes - cross

1 Q. Will you admit it or deny it?

2 A. I don't remember saying that.

3 Q. Did you say that every one went to an unknown house on  
4 Dubois Street?

5 A. No.

6 Q. Did you say that you and Laquavious stayed outside on the  
7 porch and could overhear them saying that they wanted to rob a  
8 weed spot? Did you say that?

9 A. Yes. Yes.

10 Q. Did you get tired of waiting so you and Laquavious went to  
11 your house at 75 Mill Street and stayed there for about an  
12 hour?

13 A. Yes.

14 Q. Did you tell them you went to look for Raymond because  
15 Laquavious thought his brother would be involved?

16 A. Yes.

17 Q. You went to the weed spot and everybody started running?

18 A. Yes.

19 Q. Did you lie to the police when you told them that the man  
20 was shot before you went inside?

21 A. Yeah -- I -- if I did tell them, yes.

22 Q. You lied to them about that?

23 A. Yes.

24 Q. You didn't want to put yourself inside the property while  
25 the man was shot?

E8b9chr2

Baynes - cross

1 A. Yes.

2 Q. Did you lie to them when you told them you were a lookout?

3 A. No.

4 Q. What?

5 A. No.

6 Q. Did you lie to them when you said Laquavious was a lookout?

7 A. No.

8 Q. Four different times they told you you were lying and you  
9 had to start the story over again, right?

10 A. Yes. I guess. More than -- I don't -- around four.

11 Q. Four different times. And every time you changed your  
12 story you said now I'm telling you the truth?

13 A. Yes.

14 Q. But you lied?

15 A. Yes.

16 Q. But the first time you ever told anybody from the Orange  
17 County district attorney's office that Bow Wow was involved in  
18 a robbery with you was in May of 2011, six months after you  
19 committed the crime, right?

20 A. Um --

21 Q. You never talked about Bow Wow in the hospital, did you?

22 A. No. I don't think so. I don't think so.

23 Q. Not until six months later, right?

24 A. I don't remember when.

25 Q. You don't remember when?

E8b9chr2

Baynes - cross

1 A. Yes.

2 Q. But not in the hospital? You talked about Baby E?

3 A. Yes.

4 Q. You talked about Bash?

5 A. Yes.

6 Q. You talked about other people, right?

7 A. Yes.

8 Q. But not Bow Wow?

9 A. I don't remember.

10 Q. While you were in the hospital you accused Baby E of  
11 committing a crime?

12 A. Yes.

13 Q. You accused Bash of committing a crime?

14 A. Yes.

15 Q. Didn't accuse Bow Wow of committing a crime, did you?

16 A. No.

17 Q. Not in the hospital?

18 A. No. I don't --

19 Q. You accused Bash of having a gun?

20 A. Yes.

21 Q. You accused Bash of planning a robbery?

22 A. I don't --

23 Q. Do you remember?

24 A. No. Not saying how -- I don't remember saying that at that  
25 time.

E8b9chr2

Baynes - cross

1 Q. You didn't accuse Bow Wow of planning a robbery while you  
2 were being questioned for hours and hours in the hospital, did  
3 you?

4 A. No.

5 Q. You didn't accuse Bow Wow of taking part in a robbery while  
6 you were being questioned for hours and hours in a hospital,  
7 did you?

8 A. No.

9 MR. GOLTZER: Nothing further. Thank you.

10 THE COURT: Thank you, Mr. Goltzer.

11 Mr. Greenfield.

12 CROSS-EXAMINATION

13 BY MR. GREENFIELD:

14 Q. Just a little bit ago you were talking about using a stick  
15 and beating people on the street. Do you recall that?

16 A. Yes.

17 Q. Can you keep your voice up.

18 A. Yes.

19 Q. Keep your voice up.

20 A. Yes. Yes.

21 Q. When you had this incident with the person on the street,  
22 what was it all about?

23 A. Reckless had a gun under the porch. The person told him to  
24 move it when the cops came so he called us and told us the  
25 whole story and he told us to get him. And that's when we --

E8B9CHR2

Baynes - cross

1 Q. Were you speaking in the same tone of voice then as you are  
2 now when you had this confrontation with the guy?

3 A. I didn't -- I wasn't there when they was arguing with each  
4 other.

5 Q. You just showed up late and you just started swinging?

6 A. I showed up, point him out, and then, yes, that's when we  
7 in a fight.

8 Q. Keep your voice up.

9 A. Yes. Yes. Yes.

10 Q. You're not keeping your voice up.

11 Is there a problem with keeping your voice up?

12 A. No.

13 Q. Please keep your voice up.

14 When is it for the last time that you hit somebody  
15 with a stick?

16 A. What was -- what's the question?

17 Q. When is it for the last time that you hit somebody with a  
18 big stick?

19 A. When is it the last time I hit somebody with a stick?

20 Q. When did you swing a stick at somebody or a bat? When is  
21 the last time you did that?

22 A. That day.

23 Q. Approximately what date or month or year did that happen?

24 A. The day that fight that happened on Lander Street.

25 Q. Sorry?

E8B9CHR2

Baynes - cross

1 A. The day of that fight when Reckless called us to --

2 Q. What year?

3 A. '010.

4 Q. When is the last time you carried a gun?

5 A. '010.

6 Q. Are you a changed person today?

7 A. I am.

8 Q. Would you carry a gun today?

9 A. No.

10 Q. Would you hit somebody with a stick today?

11 A. No.

12 Q. Since the last time you carried a gun, the last time you  
13 used a stick against somebody where have you been living?

14 A. I was outside until '011 of April.

15 Q. So is it fair to say that you haven't used a gun or a stick  
16 on anybody since 2011, in April, is because you've been under  
17 arrest?

18 A. No. Ever since '010 before this crime happened.

19 Q. When did you go to the Orange County jail?

20 A. April 011. April 6, 2011.

21 Q. April 2011?

22 A. Yes.

23 Q. And when you were in the Orange County jail, were you in  
24 contact with people via telephone?

25 A. Yes.

E8B9CHR2

Baynes - cross

1 Q. Friends of yours?

2 A. Yeah. Yes.

3 Q. Sorry?

4 A. Yes. Yes.

5 Q. Do you know what a third-body telephone call is in jail?

6 A. Yes.

7 Q. What is a third-body telephone call?

8 A. When you call somebody to call somebody in a three-way.

9 Q. And if you want to talk to somebody but you're not allowed  
10 to speak to him you can call a friend who can call that person;  
11 is that right?

12 A. Yes.

13 Q. Have you ever spoken -- after April 11, 2011 I should say  
14 did you ever speak to Quay Quay on the telephone?

15 A. No.

16 Q. Did you ever speak to somebody called Freaky?

17 A. On the telephone?

18 Q. Yeah?

19 A. No. He was arrested then.

20 Q. He was in jail then?

21 A. Yes.

22 Q. Orange County jail?

23 A. Yes.

24 Q. You and he were talking to each other in the Orange County  
25 jail?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. On a daily basis?

3 A. Mostly, yes.

4 Q. Do you know somebody named McDermott?

5 A. No.

6 Q. Do you know somebody named Mallory?

7 A. No.

8 Q. You never met anybody named McDermott or Mallory?

9 A. I probably met them but I don't know them by last names.

10 Q. Do you know J-Mark?

11 A. J-Mark, yes.

12 Q. Who is that?

13 A. A Blood guy from Newburgh.

14 Q. Do you know somebody named Stacks?

15 A. Yes. I know a few -- a couple of Stacks.

16 Q. What's that?

17 A. I know a few people named Stacks.

18 Q. Well did you ever speak to Stacks on the telephone?

19 A. No.

20 Q. That could visit you in jail?

21 A. No.

22 Q. Anybody named Stacks in jail with you while you were there  
23 in Orange County jail?

24 A. Yes.

25 Q. And do you know a person named Louis?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. Who is Louis?

3 A. A friend of mine's.

4 Q. A friend or a relative?

5 A. He is my Godbrother -- yeah, my Godbrother.

6 Q. He's your what?

7 A. Godbrother.

8 Q. Did he ever come visit you in jail?

9 A. No.

10 Q. Did he speak to you on the telephone?

11 A. No.

12 Q. Do you know where he is now?

13 A. No.

14 Q. Do you know where he was when you were arrested?

15 A. No.

16 Q. So since you were arrested have you had any contact at all  
17 with Louis?

18 A. No.

19 Q. Do you know if he still lives in Newburgh?

20 A. No.

21 Q. How far from your house did he live?

22 A. I don't know.

23 Q. He was a good friend of yours, wasn't he?

24 A. I guess, yes.

25 Q. Don't guess. I want you to answer me. Was he a good

E8B9CHR2

Baynes - cross

1 friend of yours, yes or no?

2 A. Yes.

3 Q. Everyday friend?

4 A. Not -- no.

5 Q. You're at his house he was in your house; isn't that right?

6 A. Yes. Sometimes.

7 Q. And the same is true for Quay Quay?

8 A. Yes.

9 Q. You were arrested April 2011 and your lawyer you say his

10 name was AJ?

11 A. Yes.

12 Q. Did AJ tell you at the time of your arrest that the police  
13 were saying you made statements to them? Did he tell you that?

14 A. Yes.

15 MR. NAWADAY: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 Q. And did he tell you that they were reduced to writing by  
19 these police officers and he read them to you; isn't that  
20 right?

21 A. Yes. Yes.

22 Yes.

23 Q. And did you tell him that's not true, I didn't make those  
24 statements?

25 A. No.

E8B9CHR2

Baynes - cross

1 Q. What did you tell him?

2 A. Nothing. I just went along with it -- with him.

3 Q. Did you tell them that your rights were violated and you  
4 want to contest the voluntariness of those statements?

5 A. He --

6 MR. NAWADAY: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: (No response).

9 Q. I didn't hear your answer.

10 A. He -- he said that we will bring up everything in trial.

11 Q. Did you have some early communication with your lawyer  
12 about cooperating with the district attorney's office?

13 A. Did I what?

14 Q. Did you talk to your lawyer in April or May of 2011 about  
15 cooperating with the assistant district attorney and the  
16 district attorney of Orange County?

17 A. No.

18 Q. Isn't it a fact that on May 13, 2011; May 20, 2011;  
19 June 20, 2011 you sat down in a room with an assistant district  
20 attorney and discussed the case of the murder of John --  
21 Mr. Henry?

22 Isn't that right?

23 A. I don't know the dates but yes.

24 Q. Well forget the dates. You were arrested April 2011,  
25 right?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. Within a month or so you're sitting down with an assistant  
3 district attorney in an office; isn't that right?

4 A. Yes.

5 Q. Had you ever sat in an office with an assistant district  
6 attorney face-to-face and have conversations with him?

7 A. Yes.

8 Q. You had? Before that time?

9 A. No.

10 Q. This is an important time for you, right? You want to sell  
11 yourself to this district attorney; am I right?

12 A. Um not real -- no.

13 Q. Sorry?

14 A. What do you mean by sell myself?

15 Q. I don't understand what you're saying.

16 A. I don't understand what you mean by sell myself to.

17 Q. Well you're being charged with a murder?

18 A. Yes.

19 Q. In April?

20 A. Yes.

21 Q. You're telling the district attorney through your lawyer,  
22 "I can help you," right?

23 A. No.

24 Q. Why did you go in the room to sit down with the DA?

25 A. He just told me that they wanted to meet and show him

E8B9CHR2

Baynes - cross

1 every -- all the evidence they had against me.

2 Q. Didn't you sit down in that room with the DA for the  
3 purpose of possibly cooperating with the DA?

4 A. At that first -- at first it was just to see what evidence.  
5 He said to see what evidence they had against me.

6 Q. And they were asking you a lot of questions in that first  
7 meeting?

8 A. Yes.

9 Q. It wasn't about are you a Yankee or are you a Met fan, was  
10 it?

11 A. No.

12 Q. It wasn't about what your favorite rap artist is, was it?

13 A. No.

14 Q. Well what was the subject matter?

15 A. The murder.

16 Q. What?

17 A. The murder case.

18 Q. And you were in the room to talk about the murder to try to  
19 get yourself off of that murder; isn't that right?

20 A. (No response).

21 Q. Yes or no?

22 A. Yes.

23 Q. And you had a product to sell and the product was your  
24 story, yes or no?

25 A. Yes.

E8B9CHR2

Baynes - cross

1 Q. Going back to the statements that you made. On the night  
2 of your -- the night you were stabbed. You were in a hospital,  
3 right?

4 A. Yes.

5 Q. And the detective walks in?

6 A. Yes.

7 Q. In a suit -- maybe not a suit, maybe just a zip up jacket  
8 because it was cold out that night; am I right?

9 A. Yes.

10 Q. Isn't it a fact that you told the detective named Michael  
11 Loscerbo -- withdrawn.

12 During the interview you had with that detective did  
13 you or did you not tell them Bash and Baby planned on robbing  
14 the weed spot at 54 Chambers Street?

15 A. I don't remember saying that.

16 Q. You deny saying that?

17 A. I don't remember saying that at that time, no.

18 Q. What's that?

19 A. At that time I don't remember saying that.

20 MR. GREENFIELD: I'm sorry, Judge.

21 THE WITNESS: At the time I don't remember saying  
22 that.

23 Q. At the time. I'm asking you -- so you're -- well, would  
24 you --

25 A. I said that but not at that time.

E8B9CHR2

Baynes - cross

1 Q. What's that?

2 A. I said it but not -- I don't remember saying it at that  
3 time.

4 Q. You did say it?

5 A. Yes.

6 Q. Did you also tell that detective that the four of you,  
7 Quay Quay, yourself, Bash, and Baby E planned the robbery on  
8 Dubois Street about 10 p.m. that night?

9 A. No.

10 Q. You didn't tell that to the detective?

11 A. No.

12 Q. You're denying making that statement?

13 A. Yes.

14 Q. Did you or did you not tell the detective that you had guns  
15 or Baby, Bash -- Baby E and Bash had guns on them when they  
16 were planning the robbery? Did you tell that to the detective?

17 A. I don't remember.

18 Q. You're saying you didn't say it, or you don't know, or you  
19 deny it?

20 A. I don't know.

21 Q. Did you not tell the detective, Bash and Baby E told you  
22 and Laquavious to help them rob the weed house?

23 A. Um --

24 Q. You didn't say that?

25 A. No.

E8B9CHR2

Baynes - cross

1 Q. And did you tell them that both you or him -- that both you  
2 and Laquavious went home and then went back on the street to  
3 see if they got anything.

4 Did you say that?

5 A. No.

6 Q. You deny saying that also?

7 A. Yes.

8 Q. And during this interview did you tell the detective that  
9 you saw a lot of people running at you -- you saw Baby E and  
10 Bash were being chased and that's when you were shot.

11 Did you tell that to the detective?

12 A. No.

13 Q. I'm sorry. I didn't hear what you said.

14 A. Not really like that, no.

15 Q. Well what did you say?

16 A. That we came there looking for Quay Quay brother and then  
17 after that they all was running out and one of them grabbed me  
18 and stabbed me, the robbers grabbed me and stabbed me.

19 Q. Are you taking any medications at the MCC?

20 A. No.

21 Q. None at all?

22 A. No.

23 Q. When and where was it when you first met Quay Quay?

24 A. From my little brother I met him. They went to school  
25 together.

E8B9CHR2

Baynes - cross

1 Q. When did that -- when did you first meet Quay Quay?

2 A. In my life? That day?

3 Q. Say that again.

4 A. In my life or in that day?

5 Q. In your life -- what year did you first meet Quay Quay?

6 A. I don't remember. I just remember him and my little  
7 brother they was going to school together.

8 Q. Your little brother and Quay Quay were going to school  
9 together?

10 A. Yeah. And I met him during.

11 Q. And you started hanging out with Quay Quay?

12 A. Yes.

13 Q. Well, the crime occurs in December of -- on December 15,  
14 2010. How many years before is it that you meet Quay Quay? Is  
15 it four or five?

16 A. Yeah. Like around four.

17 Q. About four years?

18 A. Yes.

19 Q. And you knew Quay Quay fairly well for four years?

20 A. Yes.

21 Q. He was in your house, you were in his house?

22 A. Yes.

23 Q. On a daily basis?

24 A. Yes.

25 Q. How far away do you live from Quay Quay?

E8B9CHR2

Baynes - cross

1 A. Across the town from you him.

2 Q. Across town?

3 A. Yes.

4 Q. How far away is Quay Quay's grandmother's house from where  
5 you live?

6 A. Across town too.

7 Q. And how about -- how far away is Quay Quay's mother's house  
8 from where you live?

9 A. Across town.

10 Q. How long does it take if you're walking to go from  
11 Quay Quay's house, his grandma's house, to your house?

12 A. Around -- around like five minutes. Five to ten minutes.

13 Q. Now Newburgh is a small town?

14 A. Yes.

15 Q. When did you and Quay Quay start committing crimes?

16 A. I don't know.

17 Q. Do you have any clue at all?

18 A. No. We -- we used to fight when we was younger, like fight  
19 people when we was younger.

20 Q. Well, again, we're in 2010 and a murder takes place, right?

21 A. Yes.

22 Q. What is the first crime that you and Quay Quay commit?

23 A. Assault. Fighting people.

24 Q. What's that?

25 A. Assault. Fighting people.

E8B9CHR2

Baynes - cross

1 Q. Where were you fighting people?

2 A. All over.

3 Q. How many fights did you have with people?

4 A. (No response).

5 Q. Along with Quay Quay. Give me an estimate.

6 A. Like five, around. Five to ten.

7 Q. When you say fighting?

8 A. Yes.

9 Q. Using sticks? Is that what you mean?

10 A. No. Just at one time we used the stick -- I used a stick.

11 Q. What else would you use? Knife?

12 A. No.

13 Q. You always carried a knife, didn't you?

14 A. Yes.

15 Q. From how old on were you carrying a knife?

16 A. From how old? I was --

17 Q. How old were you when you first started carrying a knife?

18 A. Around 16.

19 Q. What's that?

20 A. 16. Like 16, 17.

21 Q. So that would be 2010 you started carrying a knife?

22 A. 2010, 2009.

23 Q. Besides assaults, what other crimes did you commit with

24 Quay Quay?

25 A. Robberies.

E8B9CHR2

Baynes - cross

1 Q. How many robberies with Quay Quay?

2 A. One. One or two.

3 Q. One or two?

4 A. Two. I can think of.

5 Q. Now, Louis, how well -- you've known him all your life  
6 basically; isn't that right?

7 A. Yes.

8 Q. And was he as tight with you as Quay Quay?

9 A. Not as tight but somewhere around.

10 Q. The three of you were good friends; isn't that right?

11 A. Yes.

12 Q. You hung out together?

13 A. Yes.

14 Q. You committed crimes together?

15 A. (No response).

16 Q. Yes or no?

17 A. No. I never committed crimes with Louis.

18 Q. You never committed a crime with Louis?

19 A. No.

20 Q. You named somebody named G before; is that right?

21 A. Yes.

22 Q. Who is G?

23 A. Another brother.

24 Q. Where does he live?

25 A. In the Mullins -- well he lived in Mullins.

E8B9CHR2

Baynes - cross

1 Q. Close to you?

2 A. Yes.

3 Q. Not close to Quay Quay?

4 A. No.

5 Q. G is one of your boys?

6 A. Yes.

7 Q. And who is George. I think you said Geo. I'm sorry. Geo.  
8 Who is he?

9 A. Another friend.

10 Q. Another friend?

11 A. Yes.

12 Q. Where does he live?

13 A. Across town.

14 Q. Across town. Closer to you or closer to Quay Quay?

15 A. Quay Quay.

16 Q. Closer to your age?

17 A. Yes.

18 Q. Did you go to school with him?

19 A. No.

20 Q. Did you commit crimes with him?

21 A. Yes.

22 Q. What crimes did you commit with him?

23 A. Burglary.

24 Q. How about a guy named Snipes? Who is that?

25 A. Somebody that lived in Mullins. He lived in the Mullins.

E8B9CHR2

Baynes - cross

1 Q. Near you?

2 A. Yes.

3 Q. Close friend of yours also?

4 A. Yes.

5 Q. Commit crimes with him?

6 A. Yes.

7 Q. Do you know where Snipes is today?

8 A. No.

9 Q. Geo?

10 A. Yes.

11 Q. Where is he?

12 A. He's in a federal pen.

13 Q. What about G?

14 A. He is home somewhere.

15 MR. BUCHWALD: Get that read back, please.

16 THE WITNESS: I don't know where G is at.

17 Q. Now does your relative and/or friend who's never committed  
18 a crime with you, does he have a nickname?

19 A. Lou, Gangsta Lou.

20 Q. What is that?

21 A. Lou, Gangsta Lou.

22 Q. Gangsta Lou?

23 A. Yeah.

24 Q. But he doesn't commit crimes with you?

25 A. We just happen to never commit a crime together.

E8B9CHR2

Baynes - cross

1 Q. Now you said you sold crack on occasion. When did you  
2 start selling this crack?

3 A. Like 16, 17.

4 Around 16, 17.

5 Q. At the age of 16 or 17?

6 A. Yes.

7 Q. Who was your supplier?

8 A. Just random drug dealer. Just go to.

9 Q. You have a member of your family who is a drug dealer?

10 A. No.

11 Q. Does anybody in your family, your close family sell drugs?

12 A. No.

13 Q. No?

14 A. Yeah. No.

15 Q. What does your mother do for a living?

16 A. She works but.

17 Q. What's that?

18 A. She works. She just came home.

19 Q. Came home from where?

20 A. From being arrested.

21 Q. For doing what?

22 A. Violating -- a violation of parole.

23 Q. What was the violation -- what led to the violation of  
24 parole?

25 A. A fight I think. I don't --

E8B9CHR2

Baynes - cross

1 Q. Is your mother a crack dealer?

2 A. No.

3 Q. Never sold crack?

4 A. I don't know. I don't think so.

5 Q. As far as you know? Is that what you said?

6 A. Yeah, as far as I know.

7 Q. And did you say you stole a gun from her boyfriend?

8 A. Yes.

9 Q. What did he do for a living?

10 A. He sold drugs.

11 Q. He sold drugs?

12 A. Yes.

13 Q. And he lived in your apartment with your mother?

14 A. Yes.

15 Q. And he lived there in 2009 and '10?

16 A. Yes.

17 Q. How far back did he live there?

18 A. Just 2009 and '10 they lived together.

19 Q. Was he your supplier?

20 A. No.

21 Q. Now on direct examination you talked about different people  
22 selling drugs in Newburgh. Do you remember that?

23 A. Yes.

24 Q. And you said all you had to do basically is show up on  
25 Dubois or Broadway and you can set up shop; am I right?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. Did you need approval from any gang?

3 A. No. No.

4 Q. Isn't it a fact that back in 2009, 2010, 2011 even up until  
5 today that the Bloods control the drug trade in Newburgh?

6 A. I don't know.

7 Q. Would your mama's boyfriend a Blood?

8 A. No.

9 Q. What was he?

10 A. Nothing.

11 Q. You don't know if he's in a gang?

12 A. He wasn't.

13 Q. You told us -- you said that Raymond had a clear plastic  
14 cup and he sold crack out of that cup?

15 A. No. He held his crack inside a cup.

16 Q. And there was rice in the cup?

17 A. Yes.

18 Q. And where would he get this rice, do you know?

19 A. It was uncooked rice.

20 Uncooked rice.

21 Q. Where would he get it, do you know?

22 A. No.

23 Q. And he would put crack in this cup and cover it with rice?

24 A. Yeah. It would be a mixture.

25 Q. Was he standing on the street with this?

E8B9CHR2

Baynes - cross

1 A. No.

2 Q. Where was he --

3 A. He kept it in his dresser.

4 Q. Where was it kept?

5 A. In his dresser.

6 Q. Where?

7 A. In his dresser.

8 Q. In his dresser?

9 A. Yes.

10 Q. He was selling out of his house?

11 A. He kept it there so the crack would stay fresh in the rice  
12 overnight and stuff, like when he wasn't selling.

13 Q. So what you're saying is this clear plastic container of  
14 rice that he kept his crack in never made it to the street? Is  
15 that what you're saying?

16 A. I don't think so -- I don't know.

17 Q. He kept it in a dresser in his home?

18 A. Yes.

19 Q. And he put it -- well what if you're selling it on the  
20 street, that's where you say he was selling?

21 A. Yes.

22 Q. If you bought crack from him there might be a couple  
23 kernels of rice in every package, right?

24 A. No.

25 Q. But what you're not saying is he didn't carry this clear

E8B9CHR2

Baynes - cross

1 plastic container onto the street and sell out of that  
2 container on the street; is that right?

3 A. Yes.

4 Q. What are the 1090 Grimey Boys. What is that? Does that  
5 mean anything to you?

6 A. That was something we was going to call ourselves.

7 Q. What's that?

8 A. It was a gang we were going to call ourselves.

9 Q. Who were members of this gang?

10 A. We didn't start it.

11 Q. What's that?

12 A. We didn't start it.

13 Q. Did you ever tell anybody that you did start it?

14 A. That I did start it?

15 Q. Yes.

16 A. No.

17 Q. Did you ever tell prosecutors when you were being debriefed  
18 that the 1090 Grimey Boys was a gang that you and others  
19 belonged to?

20 A. No. I said -- I told them that that's what we was going to  
21 turn ourselves to.

22 Q. So as you sit on the stand now, so it's clear, did you ever  
23 tell a prosecutor during the course of your, quote unquote,  
24 cooperation with them that Star Status was abandoned and the  
25 1090 Grimey Boys came into existence?

E8B9CHR2

Baynes - cross

1 A. I said that --

2 Q. Yes or no?

3 A. No.

4 MR. GREENFIELD: One second, Judge.

5 (Pause)

6 THE COURT: Actually it's quarter after so why don't  
7 we take our morning break.

8 Ladies and gentlemen, please be in the jury room no  
9 later than 11:30 so we can get started on time.

10 (Jury excused)

11 THE COURT: Mr. Baynes, you may step down.

12 (Witness excused)

13 (Recess)

14 THE COURT: Can we bring in Mr. Baynes.

15 Let's get the jury.

16 (Jury present)

17 THE COURT: Mr. Greenfield.

18 MR. GREENFIELD: Yes, Judge.

19 BY MR. GREENFIELD:

20 Q. You testified last week, you testified that on I think  
21 three or four occasions you and Raymond and others were  
22 involved in burglaries. Do you recall that?

23 A. Burglaries?

24 Q. Robberies. Excuse me.

25 A. Yes.

E8B9CHR2

Baynes - cross

1 Q. And you were sure you were there because he was right next  
2 to you when these things happened?

3 A. Yes.

4 Q. You also said that on a couple of occasions you saw him in  
5 possession of guns. Do you remember saying that?

6 A. Yes.

7 Q. And one time you said that you were at a party I think it  
8 was when Raymond started firing the weapon?

9 A. Yes.

10 Q. And you were right next to him when this happened?

11 A. Yes.

12 Q. And this is in the early part of 2010?

13 A. (No response)

14 Q. Do you recall saying that?

15 A. Yes.

16 Q. You were standing right next to him. You were shooting  
17 into the air.

18 Is that the way it was happening?

19 A. Yes.

20 Q. How many shots did he fire into the air?

21 A. I don't remember.

22 Q. Well was it one or several or the whole -- did he unload  
23 the chamber?

24 A. Like two or three.

25 Q. Two or three. No doubt about it?

E8B9CHR2

Baynes - cross

1 A. No. I really don't remember. I don't remember.

2 Q. You were standing right next to him, correct?

3 A. Yeah but I just -- years.

4 Q. He takes a gun and starts firing it, correct?

5 A. Yes.

6 Q. Your ear is right next to him, correct?

7 A. Yes.

8 Q. How many did you hear?

9 A. I don't --

10 Q. Tell me.

11 A. I don't remember.

12 Q. Two, three, one, six? Give me a number.

13 A. It was like two -- two shots.

14 Q. Two shots. What kind of gun was it?

15 A. I don't remember that either.

16 Q. Was it a two-shot Derringer?

17 A. I don't know.

18 Q. But he was arrested right within a few minutes of that  
19 happening; isn't that right?

20 A. I don't know. Somebody called me and told me that he was  
21 arrested.

22 Q. Somebody told you he was arrested?

23 A. Yes.

24 MR. GREENFIELD: With the Court's approval I would ask  
25 that the witness be allowed to step down. I want to show him a

E8B9CHR2

Baynes - cross

1 diagram and ask him to make certain notations thereon.

2 THE COURT: Has the government seen the diagram?

3 MR. NAWADAY: No, we haven't.

4 THE COURT: No objection?

5 MR. NAWADAY: No objection.

6 THE COURT: Okay.

7 MR. GREENFIELD: Be deemed marked at this time as  
8 Defendants' Exhibit A I'll mark it when I'm complete.

9 THE COURT: Defendants' A?

10 MR. BUCHWALD: I think there is an A already.

11 MR. GREENFIELD: Defendant Christian's A. Okay.

12 THE COURT: Mr. Baynes, you can step down. Please  
13 both of you since you won't be near a microphone keep your  
14 voices up.

15 Q. Now I'm going to ask you to look at this diagram and ask  
16 you if it looks familiar to you.

17 A. Yes.

18 Q. And have you seen this diagram or something just like it  
19 previously?

20 A. Yes.

21 Q. Now I want you to look at the diagram and choosing  
22 whichever color you wish take one of these markers and put an X  
23 on the spot where you say you were when you were stabbed.

24 A. (Witness complies)

25 Q. And this area up here, pointing to the top of Defendant

E8B9CHR2

Baynes - cross

1 Christian A, is the entranceway; is this not right?

2 A. No. This is.

3 Q. Is that the entranceway here?

4 A. Yes.

5 Q. So you have him approximately how many feet into the  
6 apartment?

7 MR. NAWADAY: Objection.

8 Your Honor, can we have brief voir dire because I  
9 don't think this is in evidence yet.

10 THE COURT: Defendant's A. Okay.

11 MR. NAWADAY: It's only been offered.

12 VOIR DIRE EXAMINATION

13 BY MR. NAWADAY:

14 Q. Mr. Baynes, do you recognize this?

15 A. Yeah. Looks like the inside of the apartment.

16 Q. It's a diagram. Have you seen it before?

17 A. Yes.

18 Q. Do you know if it's to scale, meaning everything is exact?

19 A. No.

20 Q. And is it a fair and accurate diagram other than it's not  
21 to scale of what you remember the different rooms looking like?

22 A. Kind of besides this --

23 MR. GREENFIELD: Keep your voice up.

24 THE COURT: Mr. Baynes, I can't hear you at all.

25 THE WITNESS: Yes. Besides this part right here.

E8B9CHR2

Baynes - cross

1 Q. Where is the front entrance?

2 A. Down here.

3 Q. Is that about accurate?

4 A. Yes.

5 Q. By the way, did you draw this?

6 A. No.

7 MR. NAWADAY: Nothing further.

8 THE COURT: Mr. Greenfield.

9 MR. GREENFIELD: I offer it into evidence as Defendant  
10 Christian A.

11 MR. NAWADAY: No objection.

12 THE COURT: Okay.

13 (Defendant's Exhibit Christian A received in evidence)

14 CROSS-EXAMINATION CONTINUED

15 BY MR. GREENFIELD:

16 Q. Could you estimate how many feet it is from the entranceway  
17 to where you marked your X, the green X?

18 A. I don't -- I don't know.

19 Q. You have no idea based on your recollection of what the  
20 apartment looked like as to how deep into the apartment you  
21 got?

22 A. (No response).

23 Q. You do not?

24 A. It was -- this -- yes. It was --

25 Q. Speak up.

E8B9CHR2

Baynes - cross

1 A. I don't really know. It was just --

2 Q. Face the jury so that they can hear you.

3 A. This all was -- it was quick. I don't know. It wasn't  
4 that far though inside the house.

5 Q. Well this is more than halfway or just about halfway into  
6 the apartment; isn't that right?

7 A. Yeah, around.

8 Q. Speak up.

9 A. Yes. Yes.

10 Q. And from the entrance to the second door there was  
11 approximately how many feet?

12 A. See I don't remember it being like a second door.

13 MR. GREENFIELD: Well, one second, Judge.

14 (Pause)

15 THE COURT: Any day, gentlemen.

16 MR. GREENFIELD: The picture that's in evidence, we'd  
17 like to show it to the witness. We're trying to locate it. I  
18 have a copy.

19 Q. I show you what's been marked as Defendants' Exhibit P  
20 that's --

21 THE COURT: Defendant Christian B?

22 MR. GREENFIELD: No.

23 MR. BUCHWALD: Thomas P.

24 MR. GREENFIELD: Defendant Thomas P like in Paul.

25 THE COURT: So this is in evidence?

E8B9CHR2

Baynes - cross

1 MR. GREENFIELD: It's in evidence.

2 THE COURT: Okay.

3 Q. I show you this photograph. Does that look familiar to  
4 you?

5 A. Yes.

6 Q. What's that? You need to speak up.

7 A. Yes. Yes. Yes.

8 Q. Think you're on the street and then talking to your  
9 friends, okay.

10 You've seen this previously?

11 A. Yeah, yes.

12 Q. And is this the interior of the apartment of 54 Chambers  
13 Street looking out onto the street?

14 A. Yes.

15 Q. And would it be fair to say that from the outside door  
16 until this portion of the wall is met it takes about --  
17 withdrawn.

18 From this part of the apartment out to the door can  
19 you estimate how many feet that is?

20 A. A few feet. It was small. Small.

21 Q. Well how many feet would you estimate that to be?

22 A. I don't know.

23 Q. Speak up.

24 A. I don't know. Some feet.

25 Q. Ten feet?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. Approximately?

3 A. Yes.

4 Q. Could be eight? Could be a little more? Could be a little  
5 less?

6 A. Yes.

7 MR. GREENFIELD: Take your seat again please and we'll  
8 come back to this diagram.

9 Q. Last week you were talking about the incident that happened  
10 on December 15, 2010. And at some point in that recitation you  
11 said that after a phonecall was made by a man, a lady came up  
12 with a bag.

13 Do you remember that?

14 A. Yes.

15 Q. And approximately what time of the day or night was it when  
16 this lady came forward with the bag?

17 A. I don't remember.

18 Q. What's that?

19 A. I don't know the time. It was nighttime.

20 Q. It was nighttime?

21 A. Yes.

22 Q. Now do you own a cellphone, by the way -- did you own a  
23 cellphone on December 15, 2010?

24 A. Yes.

25 Q. And did your friend Quay Quay own one?

E8B9CHR2

Baynes - cross

1 A. I think, yes.

2 Q. Do you recall ever having a conversation with your best  
3 friend basically, Quay Quay, on a cellphone?

4 A. Yes. But it was times we didn't have a cellphone.

5 Q. And how about your relative friend and also -- I guess your  
6 relative friend Louis. Did he have a cellphone?

7 A. Yes.

8 Q. And how about G? Did he have a cellphone?

9 A. Yes.

10 Q. And Geo? Did he have a cellphone?

11 A. I don't know.

12 Q. And Snipes? Did he have a cellphone?

13 A. I don't know.

14 Q. Now, there came a time in May about a month, six weeks  
15 after you were first arrested when your lawyer and you went to  
16 a meeting in the prosecutor's office.

17 Do you remember that?

18 A. Yes.

19 Q. It would be fair to say that you went into the prosecutor's  
20 office for the sole purpose of trying to help yourself get out  
21 of predicament you were in?

22 A. Yes.

23 Q. And you wanted to be there and tell them what happened on  
24 the night of December 15, 2010 and hope that they would believe  
25 your story? Is that right?

E8B9CHR2

Baynes - cross

1 A. No. That time was just going for evidence.

2 Q. What's that?

3 A. At that time we was going to look at all the evidence they  
4 had on us.

5 Q. Do you recall sitting down with the prosecution in May  
6 of -- May 13, 2011 and telling them what you wanted them to  
7 believe as to what happened on December 15, 2010?

8 A. Yes.

9 Q. You did? You told them a story, right?

10 A. Yes.

11 Q. And you hoped and you really wanted them to believe you,  
12 right?

13 A. Yes.

14 Q. Because you thought that if you were able to convince them  
15 of this story, that maybe you could avoid a murder charge,  
16 right?

17 A. Yes.

18 Q. And that was on top, right here, in the front of your  
19 brain, you wanted to avoid the murder charge; isn't that right?

20 A. Yes.

21 Q. Now, did you tell -- withdrawn.

22 The first thing you told the district attorney on that  
23 day was that you left your house with Louis; isn't that right?

24 A. Yes.

25 Q. Louis was Gangsta Lou, right?

E8B9CHR2

Baynes - cross

1 A. Yes.

2 Q. And what time of the day is it that you leave your house?

3 A. Around twelve, eleven in the morning. Daytime.

4 Q. Did you tell the district attorney that you and Gangsta Lou  
5 and my client, Raymond, were walking around checking out drug  
6 spots?

7 A. No. We was walking around. Then Raymond just start  
8 putting --

9 Q. Is your answer no, you didn't tell them that?

10 A. Yes. Yes.

11 Q. Isn't it a fact specifically that you told him on the first  
12 time you met the district attorney that it was you, Lou, and  
13 Raymond were walking around checking spots?

14 A. Yes.

15 Q. Yes. So when you just said no you were wrong?

16 A. When I said no what? To what?

17 Q. Did you tell the prosecutor that same day that Gangsta Lou  
18 left and Quay Quay took his spot?

19 A. Yes.

20 (Continued on next page)

E8bnchr3

Baynes - cross

1 Q. Did you tell the district attorney that three of you were  
2 walking around and planning to rob drug spots?

3 A. Yes.

4 Q. Did you then tell the district attorney that you and Lou on  
5 your own walked around from anywhere from 30 minutes to an  
6 hour, checking spots?

7 A. No.

8 Q. Did you tell him that you and Lou were walking around by  
9 yourselves in that area?

10 A. No.

11 Q. Specifically did you tell the district attorney on May 13,  
12 2011, that you and Louis walked around for about 30 minutes to  
13 an hour, and then Louis left and got Quay Quay and you spent a  
14 few hours checking. Did you make that statement?

15 A. No, not like that.

16 Q. If somebody who was present at that meeting says you said  
17 that, would they be wrong?

18 A. Yes.

19 Q. Because you say you never said it?

20 A. I said -- not like that I didn't say it -- just me and Lou  
21 was walking around.

22 Q. You and Lou were walking around?

23 A. No, it wasn't just me and Lou walking around.

24 Q. Well, why was Lou with you that day?

25 A. He spent night at my house the day before.

E8bnchr3

Baynes - cross

1 Q. Why was he with you that day walking around when other  
2 people were walking around with him supposedly checking drug  
3 spots?

4 A. He was already with me.

5 Q. What is that?

6 A. He was already with me at first.

7 Q. Correct me if I'm wrong, you said earlier that Gangsta Lou  
8 Lou never committed a crime with you?

9 A. I didn't say he never committed a crime. He never  
10 committed one with me.

11 Q. That is what I am saying.

12 A. Right.

13 Q. You testified earlier that Gangsta Lou and yourself in your  
14 entire relationship never committed a crime, correct?

15 A. Yes.

16 Q. And here on December 15, 2010, the day that you are walking  
17 around checking drug spots out, Gangsta Lou is walking around  
18 with you?

19 A. But it was really just me and Reckless together. He was  
20 just there.

21 Q. He was just there?

22 A. Yes.

23 Q. How far away from Chambers Street, 54 Chambers Street, does  
24 Gangsta Lou live?

25 A. I don't know.

E8bnchr3

Baynes - cross

1 Q. How far away do you live?

2 A. A good maybe like ten minutes away, ten, fifteen minutes  
3 away.

4 Q. Did you invite him along for the walk?

5 A. At that time I didn't know what we was doing that day.

6 Q. You had no idea what was going to happen that day when you  
7 woke up and walked with Lou to the vicinity of 54 Chambers  
8 Street? Is that what you are testifying to in this courtroom?

9 A. Yes.

10 Q. You had no prior knowledge of it?

11 A. We didn't plan it days before. It just happened.

12 Q. Were you on prior days walking around checking out drug  
13 spots with Quay Quay?

14 A. No. With Reckless.

15 Q. What is that?

16 A. Not with Quay Quay.

17 Q. With Lou?

18 A. No.

19 Q. Who then?

20 A. Reckless.

21 Q. Who is that?

22 A. Reckless, Raymond.

23 Q. When did those walk-arounds take place?

24 A. When?

25 Q. When.

E8bnchr3

Baynes - cross

1 A. Just in all random times.

2 Q. Incidentally, what was the weather like that day?

3 A. I don't know. It was sold, but the sun was out.

4 Q. What was that?

5 A. It was cold, but the sun was out.

6 Q. Very cold?

7 A. Yes.

8 Q. While this walking around is taking place, how long does it  
9 take? How many hours are used up?

10 A. Everything happened, all of that, because we was walking  
11 around the 24th -- I mean, the 14th of December.

12 Q. What?

13 A. Everything that happened before the murder was the 14th of  
14 December, it took the whole day. Everything was the whole day.  
15 The next day --

16 Q. I'm sorry?

17 A. Late at night, the next day.

18 Q. When you were walking around on the 14th --

19 A. Yes.

20 Q. What time do you start checking spots?

21 A. Around like 2, I don't know. Because I have to -- we met  
22 up with Reckless.

23 Q. You said there came a time where you met up with a guy  
24 whose name you didn't know, and that fellow made a phone call  
25 on a cell phone and at that point a lady came with a bag? Do

E8bnchr3

Baynes - cross

1 you remember that?

2 A. Yes.

3 Q. And this is at nighttime now? It's dark out?

4 A. Yes.

5 Q. What street did this occur on?

6 A. Dubois.

7 Q. Dubois Street?

8 A. Yes.

9 Q. What happened after that lady came with the bag? What was  
10 the next thing that occurred?

11 A. He pointed on the mailbox, and she dropped the bag in the  
12 mailbox.

13 Q. Put it in the mailbox?

14 A. Yes.

15 Q. You mean somebody's -- not the box where you would drop  
16 mail? You are not saying that, are you?

17 A. The mailbox on a person's house.

18 Q. A person's home?

19 A. Yes.

20 Q. Do you know the address or the street where this happened?

21 A. Dubois.

22 Q. Could you point the apartment out or the building out?

23 A. Not the exact building, but around the building.

24 Q. Then you say after she left what happened?

25 A. After that, he started calling more people. He started

E8bnchr3

Baynes - cross

1 calling more people.

2 Q. That other person called more people?

3 A. Yes.

4 Q. And again on a cell phone?

5 A. Yes.

6 Q. And what happened after he called more people on the cell  
7 phone?

8 A. Some people started showing up, coming.

9 Q. A number of people showed up?

10 A. Yeah, like two or three.

11 Q. Was your cell phone ever seized by the police?

12 A. No.

13 Q. It wasn't?

14 A. No.

15 Q. Did you have one that day?

16 A. Not on me.

17 Q. Was your account ever seized via subpoena or search warrant  
18 by law enforcement?

19 A. No, not that I know of.

20 Q. I think you said something about a meeting in a building  
21 and you were on a porch, do you remember that?

22 A. Yes.

23 Q. Tell me what that is all about.

24 A. They went inside, and Bash didn't want me going with them,  
25 so me and Quay Quay stayed outside while they was inside

E8bnchr3

Baynes - cross

1 talking.

2 Q. Now you are on a porch on -- is it Dubois Street?

3 A. Yes.

4 Q. You were outside?

5 A. Yes.

6 Q. How long are you outside while the people are inside that  
7 building on Dubois Street?

8 A. Like 15, 20 minutes.

9 Q. It was cold out, you are saying?

10 A. Yes.

11 Q. I assume the people closed the door?

12 A. Yes.

13 Q. You were standing where on the porch in relation to the  
14 door?

15 A. Right next to it.

16 Q. And you could hear through this closed door?

17 A. Yes, some, a little bit.

18 Q. Were you wearing a hat that day?

19 A. No.

20 Q. What if I tell you when you were brought to the hospital  
21 part of your clothing was a hat?

22 A. A hat?

23 Q. Yes.

24 A. I don't --

25 Q. You are not sure?

E8bnchr3

Baynes - cross

1 A. I don't think I had a hat on.

2 Q. Well, this conversation is taking place behind the closed  
3 door, and you are outside on the street with Quay Quay, on the  
4 porch with Quay Quay, am I right?

5 A. Yes.

6 Q. Again, you are able to overhear this conversation while you  
7 are on the porch?

8 A. Bits and pieces, yes.

9 Q. Where do you go from there? What do you do at that time?

10 A. We left, went to a chicken spot, and then we went to my  
11 house.

12 Q. Then what do you do after you go to a chicken spot and go  
13 to your house?

14 A. We come out -- we stay at my house for a little bit, and  
15 then we come back out.

16 Q. So you are on the street now after being in your house for  
17 a little bit. Then what happens?

18 A. We go looking for everybody.

19 Q. Where did you go looking?

20 A. First at Dubois, but nobody was there.

21 Q. Why did you go there?

22 A. Because that's where we left them at.

23 Q. What is that?

24 A. That's where we left them at.

25 Q. By the way, how far is it from the house on Dubois to your

E8bnchr3

Baynes - cross

1 house where you went to that night?

2 A. Like five or ten minutes. It was close.

3 Q. And then you come back and you go on the street looking for  
4 everybody?

5 A. Yes.

6 Q. Last week you told this jury that when you came upon these  
7 people, you and Quay Quay saw three people being robbed on the  
8 street, and that they were forced into 54 Chambers Street?

9 Do you remember testifying to that?

10 A. Not fully -- I said we went down with them and then the  
11 robbery happened.

12 Q. Did you say that you saw three people being forced into the  
13 building and that they were robbed?

14 A. Yes.

15 Q. On the street? They were robbed on the street?

16 A. They was right outside the house on the sidewalk.

17 Q. What is that?

18 A. On the sidewalk outside the house.

19 Q. On the sidewalk outside the house three men were robbed at  
20 gunpoint?

21 A. Yes.

22 Q. And that those three men who were robbed at gunpoint were  
23 then forced into the house by these other people on the street  
24 who had guns?

25 A. Not really forced. They just told them to go inside and

E8bnchr3

Baynes - cross

1 all of them besides one of them went.

2 Q. You were standing across the street when you made this  
3 observation of the three people being robbed, correct?

4 A. No, I was there in the crowd.

5 Q. You were right there?

6 A. Yes.

7 Q. Seeing them being robbed?

8 A. Yes.

9 Q. When you went to the DA's office in May of 2011, did you  
10 tell the DA that you saw a man pulling on the door and --  
11 pulling on the door?

12 A. From the outside?

13 Q. From the outside.

14 A. I said I -- I don't think that day. I said the night of  
15 the murder.

16 Q. When you first got there, did you tell the DA that, I saw a  
17 man pulling on the door?

18 A. Yes.

19 Q. Was that true?

20 A. No.

21 Q. Why did you tell that to the DA?

22 A. To still make it seem I wasn't involved.

23 Q. So what you wanted to do by telling that lie about seeing  
24 the man pulling on the door was to remove yourself from the  
25 murder itself, is that right?

E8bnchr3

Baynes - cross

1 A. Yes.

2 Q. Put yourself in a position where you can say, I was outside  
3 on the street, I saw this man pulling on the door, and I was  
4 still on the street when shots were fired from inside, hitting  
5 the man who screamed, is that right?

6 A. Yes.

7 Q. That is what you told the DA, right?

8 A. Yes.

9 Q. You lied to the DA?

10 A. Yes.

11 Q. The purpose of your lie was to show to him that you were  
12 not involved in the murder, you are on the street, you had  
13 nothing to do with the murder, somebody from inside that  
14 apartment shot that man, correct?

15 A. Yes.

16 Q. You knowingly lied about that to try to help yourself?

17 A. Yes.

18 Q. Am I right?

19 A. Yes.

20 Q. You told them the man screamed after he was shot?

21 A. Yes.

22 Q. That is true, the man screamed, didn't he?

23 A. Yeah. I heard screaming, yes.

24 Q. But you were inside the apartment when that happened,  
25 weren't you?

E8bnchr3

Baynes - cross

1 A. Yes.

2 Q. You were deep inside that apartment, weren't you?

3 A. I was at the door.

4 Q. You were at the door when the man was shot?

5 A. Yes.

6 Q. Right at the door?

7 A. I was --

8 Q. Please come down again and --

9 MR. NAWADAY: Objection. Can he let the witness  
10 finish the answer.

11 THE COURT: Did he answer the question?

12 MR. NAWADAY: I thought the witness had started to  
13 answer and he cut him off. Your Honor, can we have the witness  
14 step down.

15 THE COURT: Mr. Baynes, you may step down.

16 Q. Mr. Baynes, you prefer the green pen still? Please put an  
17 X with a 1 next to it, X-1 where you were standing in the  
18 apartment when the man was shot.

19 You can take your seat.

20 Going back to the story you told the district attorney  
21 back in May of 2011, did you say that at the moment the man was  
22 shot and you were still across the street or still not inside  
23 the apartment, five people ran out of the apartment, is that  
24 right?

25 A. Yes.

E8bnchr3

Baynes - cross

1 Q. You told them that?

2 A. Yes.

3 Q. Another lie, isn't that right?

4 A. Yes.

5 Q. The purpose of that lie was to show that one of those five  
6 people who were in the apartment pulled the trigger, isn't that  
7 right?

8 A. Yes.

9 Q. That you couldn't have pulled the trigger because you were  
10 still outside, correct?

11 A. Yes.

12 Q. But we now know that you lied through your teeth, am I  
13 right?

14 A. Yes.

15 Q. You lied through your teeth to help to save your buddy,  
16 correct?

17 A. Yes.

18 Q. You also said that the five people who ran out all were  
19 wearing masks, is that right?

20 A. No. Some of them was wearing masks.

21 Q. Some of them, that is your recollection now. I'm asking  
22 you back then. Did you tell the district attorney in May of  
23 2011 all five people had masks on?

24 A. Yes.

25 Q. Again, was that a lie or was that telling the truth?

E8bnchr3

Baynes - cross

1 A. A lie.

2 Q. When this man is shot and you hear him screaming, is it  
3 fair to say you and Quay Quay started walking toward the  
4 apartment?

5 A. No.

6 Q. No, but that is what you told the DA back in May of 2011,  
7 isn't it?

8 A. I said we seen him, and we started to run away, and that's  
9 when everybody came and grabbed us, or grabbed me.

10 Q. Did you tell the DA in May, particularly May 13, 2011 that  
11 you and Quay Quay were across the street, the man got shot, and  
12 you started walking toward the apartment?

13 A. I don't remember saying that.

14 Q. You don't remember?

15 A. No.

16 Q. Now, you say that you ultimately enter the apartment,  
17 correct?

18 A. Yeah.

19 Q. Where in the apartment is it that you say you first see  
20 Raymond wrestling with somebody?

21 A. In like the living room part.

22 MR. GREENFIELD: With the Court's approval, could the  
23 witness come down and mark X-2 at the spot where the witness  
24 says he first saw my client.

25 THE COURT: You may step down, Mr. Baynes.

E8bnchr3

Baynes - cross

1 Q. I should have kept you down here. Sorry.

2 I am going to ask you one further question. When you  
3 are stabbed, were you standing where you put the X mark now?

4 A. Yes.

5 Q. Isn't it a fact that you told the district attorney on May  
6 13, 2011, that when were you stabbed you were within five or  
7 ten feet of the entrance to the building, to the apartment?

8 A. Yes.

9 Q. You did say that, correct?

10 A. Yes.

11 Q. So would you come down here now and put an X-2 as to where  
12 you -- withdrawn. Let's stay at that.

13 Did there come a time when somebody told you that you  
14 couldn't have been standing by the door and that you were  
15 standing somewhere else?

16 A. Yes.

17 Q. Who was that person?

18 A. The detective.

19 Q. Who is that?

20 A. The detective.

21 Q. Say that loudly.

22 A. The detective.

23 Q. The detective told you what?

24 A. That I couldn't be standing by the door.

25 Q. You couldn't have been there. The detective, was he there

E8bnchr3

Baynes - cross

1 when this happened?

2 A. No.

3 Q. You were there when this happened, correct?

4 A. Yes.

5 Q. You said you were standing right next to the X-1 mark,  
6 right?

7 A. Yes.

8 Q. Are you sure the detective wasn't there that night?

9 A. Positive.

10 Q. Positive.

11 A. Yes.

12 Q. But the detective said, Anthony, you're wrong, you couldn't  
13 have been standing there, you had to be all the way over here  
14 inside the apartment, something like that?

15 A. Yes.

16 Q. And that's Detective Cortez?

17 A. I don't know the --

18 Q. Which detective told you, the detective who was at the  
19 first meeting?

20 A. I don't -- yeah, it was the same lawyer -- I mean the same  
21 detective at all of them.

22 Q. Where did you go after this whole occurrence happened  
23 inside the apartment?

24 A. To Quay Quay's grandmother's house.

25 Q. How far is that from the area where this happened?

E8bnchr3

Baynes - cross

1 A. Like around the corner, like five minutes.

2 Q. When you got to Quay Quay's grandmother's apartment -- who  
3 is also Raymond's grandmother, right?

4 A. Yes.

5 Q. Raymond was in the apartment?

6 A. Yes.

7 Q. When you first spoke to the DA on May 13, 2011, the  
8 detective was there, the DA was there, you were there, and your  
9 lawyer was there, am I right?

10 A. Yes.

11 Q. You made no mention to the district attorney of the fact  
12 that you were stabbed in the interior rooms of the apartment?

13 A. I don't know. I don't think so.

14 Q. What's that?

15 A. I don't know. I don't think so.

16 Q. You don't think so.

17 Well, you told them it happened here at the door,  
18 didn't you?

19 A. It was a point in time, yeah, I did tell them that.

20 Q. The first time you spoke to law enforcement in an effort to  
21 cooperate with them, you said you were stabbed within five or  
22 ten feet of the entrance to the apartment?

23 A. Yes.

24 Q. No doubt about that, right? The masks you said everybody  
25 was wearing when they went in, you described them as half

E8bnchr3

Baynes - cross

1 masks, do you recall?

2 A. Yes.

3 Q. And I think you said up to the nose, is that right?

4 A. No, it covered the nose, too.

5 Q. It covers the nose, just over the nose?

6 A. Yes.

7 Q. And everybody had the same type mask on?

8 A. Some of them had a full mask, some of them had black flags.

9 Q. When for the first time do you say they had masks? When  
10 did you tell that to anybody?

11 A. I told that when I first talked to them so they would think  
12 that I couldn't point out anybody.

13 Q. You said Raymond was wearing a half mask, didn't you?

14 A. Yes.

15 Q. And a half mask covers the nose and down around the back of  
16 the head and the chin and the lips, correct?

17 A. Yes. It covers the bottom half of your face.

18 Q. It doesn't cover the top of your head, does it?

19 A. No.

20 Q. It doesn't cover the eyes, does it?

21 A. No.

22 Q. Were you ever shown a mask in this case?

23 A. What?

24 Q. Were you ever shown a mask in this case?

25 A. No.

E8bnchr3

Baynes - cross

1 Q. No one from the government or the detectives or the DA's  
2 office ever showed you a mask and asked you if you could  
3 identify it?

4 A. No.

5 Q. Now, with respect to the occurrence on December 14, 2010,  
6 going into December 15, 2010, right around the midnight hour,  
7 one thing you're sure of, you didn't have a gun?

8 A. Yes.

9 Q. You didn't have a mask?

10 A. Yes.

11 Q. Quay Quay didn't have a gun?

12 A. Yes.

13 Q. Quay Quay didn't have a mask?

14 A. Yes.

15 Q. Was Louis there or not that night?

16 A. Wasn't.

17 Q. What's that?

18 A. He wasn't there.

19 Q. Incidentally, with the masks, when is it that you first saw  
20 people wearing masks?

21 A. Once I caught up to them on First Street.

22 Q. How far from the incident?

23 A. Right down the street.

24 Q. That's when the masks started going on? Is that what you  
25 are saying?

E8bnchr3

Baynes - cross

1 A. Yes.

2 Q. How long have you been in the MCC now?

3 A. Around two years.

4 Q. You have heard stories in the MCC about people who are  
5 cooperating with the government, have you not?

6 A. Yes.

7 Q. It's common knowledge in the MCC that the government writes  
8 letters for people who cooperate in their investigations,  
9 correct?

10 A. Yes.

11 Q. You have seen guys in there or heard stories of people in  
12 there who have faced a whole lot more time than you are facing  
13 on a 17-year plea, am I right?

14 A. Yes.

15 Q. People facing life sentences, life plus 30, life plus 50,  
16 right? You have heard of those?

17 A. Yes.

18 Q. You have been on the floor with people like that, haven't  
19 you?

20 A. Yes.

21 Q. When it is time to get sentenced, most people know they are  
22 not getting that life sentence, they are not going to get the  
23 number that they've pled to, but they are going to get a break  
24 in their sentencing based on the cooperation?

25 MR. NAWADAY: Objection.

E8bnchr3

Baynes - cross

1 THE COURT: Overruled.

2 A. I guess. I don't --

3 Q. You know so, isn't that right? Has anybody who you know  
4 has been cooperating in the two years you have been here, did  
5 you ever hear of somebody getting the number they pled to?

6 A. No.

7 Q. Have you heard of anybody getting anywhere near the number  
8 they pled to?

9 A. No.

10 Q. That gives you hope that you are going to get time served?

11 A. Yes.

12 Q. You have heard a lot of people have gotten time served in  
13 the MCC for the crimes that they pled guilty to, even though  
14 they faced horrendously high numbers?

15 A. Yes.

16 Q. In fact, people on your floor, I'm sure, were looking at  
17 say a 40-year plea sentence and they went down to get sentenced  
18 and never came back? Am I right?

19 A. Yes.

20 Q. And the reason they didn't come back is they didn't escape  
21 from custody, did they?

22 A. No.

23 Q. They got time served?

24 A. Yes.

25 Q. A lot of guys got time served? That's why you think you

E8bnchr3

Baynes - cross

1 can get time served?

2 A. Yes.

3 Q. But you wouldn't lie to get time served, would you?

4 A. No.

5 MR. GREENFIELD: Nothing further.

6 THE COURT: Any further cross-examination?

7 Mr. Buchwald, will you be cross-examining?

8 MR. BUCHWALD: Can I just see the exhibit so I can see  
9 where the second mark is.

10 CROSS EXAMINATION

11 BY MR. BUCHWALD:

12 Q. Good afternoon, Mr. Baynes.

13 A. Good afternoon.

14 Q. You and I have never spoken, have we?

15 A. No.

16 Q. You mentioned during the course of your testimony somebody  
17 by the name of Baby E.

18 MR. BUCHWALD: Can we have Government Exhibit 208.

19 Q. Let me show you Government Exhibit 208. Is that Baby E?

20 A. Yes.

21 Q. I think you also knew him as Eric?

22 A. Yes.

23 Q. And as of December 2010, how long had you known him?

24 A. A couple of years.

25 Q. He lived in the Heights, is that right?

E8bnchr3

Baynes - cross

1 A. I don't know for -- he hangs out in Heights. I don't know  
2 where he lives.

3 Q. I'm sorry. Could you speak up.

4 A. He hangs out in the Heights. I don't know where he lives.

5 Q. Well, did you ever tell the prosecutors that he lived in  
6 the Heights?

7 A. No.

8 Q. But he hung out in the Heights? That's where you're  
9 familiar with seeing him?

10 A. Yes.

11 Q. You lived on what street? Mill Street?

12 A. Yes.

13 Q. Could we have Government Exhibit 251 on the screen. This  
14 is the map. Is Mill Street depicted on the map in front of  
15 you?

16 A. Yes.

17 Q. Could you tell us, as you look at the map where is Mill  
18 Street, to help the ladies and gentlemen of the jury, on the  
19 left side or the right side?

20 A. The bottom left corner.

21 Q. Do you see the Heights?

22 A. Yes -- well, yes.

23 Q. Could you tell us, generally where is the Heights.

24 A. It is not really on here, but it's like William Street, the  
25 whole other side of Broadway.

E8bnchr3

Baynes - cross

1 Q. Is it on the lower right side?

2 A. It's more like in the middle bottom.

3 Q. Let me show you 251 in evidence, 250 in evidence and see if  
4 you're better able to see the Heights.

5 A. Yes. About the middle.

6 Q. Let me show you what we've previously marked as Defendant  
7 Thomas Exhibit H for identification and ask you if that appears  
8 to be an accurate street map of what you know as the Heights in  
9 Newburgh.

10 A. Yes.

11 MR. BUCHWALD: We offer H for identification into  
12 evidence, your Honor.

13 MR. NAWADAY: No objection.

14 THE COURT: Defendant Thomas H will be received.

15 (Defendants' Exhibit Thomas H received in evidence)

16 Q. Am I correct, if we can keep up Exhibit 250, on Exhibit  
17 250, do you see at the bottom center where it says Carson  
18 Avenue?

19 A. Yes.

20 Q. Carson Avenue is really right in the middle of the Heights,  
21 is that correct?

22 A. Yes.

23 MR. BUCHWALD: If I may display this to the jury, your  
24 Honor.

25 Q. The part from Carson Avenue south, going down, is called

E8bnchr3

Baynes - cross

1 the Center or Inner Heights, is that right?

2 A. I don't know.

3 Q. Is there a part of the Heights called the Upper Heights,  
4 the part that goes from Carson to Benkard?

5 A. I don't know. I just know the Heights.

6 Q. But this is the entirety of the Heights as you understand  
7 it, in Newburgh, is that correct?

8 A. Yes.

9 Q. Now, there came a point in time in preparation for the  
10 trial when you were asked by the federal prosecutors about a  
11 month and a half ago to tell them how you came to first meet  
12 Gucci, isn't that correct?

13 A. Yes.

14 Q. When did you first meet Gucci?

15 A. In the Heights. It was like being in the Heights.

16 Q. Please keep your voice up.

17 A. In the Heights. In the Heights, sir.

18 Q. When did you first meet him? Not where, when?

19 A. I couple of years before this case.

20 Q. All right.

21 A. Like a year.

22 Q. A couple of years before. This case is December 15, 2010.  
23 Is that what you are referring to when you say this case?

24 A. Yes.

25 Q. Incidentally you were born in January of 1993, correct?

E8bnchr3

Baynes - cross

1 A. April 1993.

2 Q. April of 1993. So you were just a few months short of 18  
3 years old on December 15, of 2010, correct?

4 A. Yes.

5 Q. When you say a few years before this event that you are  
6 talking about, 2009, 2008, when was it that you first met?

7 A. Yeah, like around 2009 or '8.

8 Q. Where did you meet Gucci?

9 A. In the Heights.

10 Q. How often did you see him in the Heights?

11 A. Like every once in a while I seen him like. He would be in  
12 the Heights a lot, all the time.

13 Q. Please keep your voice up.

14 A. He would always be in the Heights. When I'm in the Heights  
15 I see him sometimes.

16 Q. All right. Well you say all the time, how frequently did  
17 you see Gucci in the Heights? Was it once a week? Once a  
18 month? A couple of times a week? How frequently would you see  
19 him in the Heights?

20 A. Like once a week. I don't usually go to the Heights that  
21 much.

22 Q. So you would see him once a week, and was that how often  
23 in -- I'm going to ask you first how often in 2008 you saw him  
24 and then how often in 2009 you saw him. So in 2008, how often  
25 did you see Gucci in the Heights?

E8bnchr3

Baynes - cross

1 A. I don't remember that. Like, I just seen him around  
2 sometimes.

3 Q. Do you remember telling the prosecutors that you socialized  
4 with him on and off?

5 A. No, we was in the same crowd. Like, he knew people I knew.

6 Q. Say again?

7 A. We was in -- like, he knew people that I know.

8 Q. He knew people that you knew, and so you would be together?

9 A. Not necessarily talking with each other, just in the same  
10 crowd, just talking.

11 Q. All right. But you told the prosecutors that you and he  
12 socialized on and off, is that right?

13 A. Not -- just like, What's up? Not really talking. We never  
14 really talked.

15 Q. On July 2 of this year, just a month or so before our trial  
16 began, did you tell the prosecutors that you and Gucci  
17 socialized on and off?

18 A. No. Just hi's and byes. Not talking. Just hi's and byes  
19 not really talking.

20 Q. All right. You believed, did you not, that Gucci was  
21 several years older than you, is that right?

22 A. Yes.

23 Q. How much older than you did you believe Gucci was?

24 A. Like six or five years.

25 Q. Six or five years older than you?

E8bnchr3

Baynes - cross

1 A. Yes.

2 Q. That's what you told the prosecutors, correct?

3 A. Yes.

4 Q. That's what you have always believed, since you met him in  
5 2008, is that right?

6 A. Yes.

7 Q. And incidentally, in 2009, how often did you see Gucci?

8 A. The same, just on and off.

9 Q. Always in the Heights?

10 A. Yes.

11 Q. Is there someplace that you would refer to as the South  
12 Side?

13 A. Yes, like the other side of town.

14 Q. All right. Did you ever see him on the South Side?

15 A. No.

16 Q. Did you tell the prosecutors that you believed Gucci was  
17 from the South Side?

18 A. No.

19 Q. Do you deny telling prosecutors that Gucci was from the  
20 South Side? Withdrawn.

21 Now, you told the prosecutors you believed Gucci's  
22 first name was Glenn, is that right?

23 A. Yes.

24 Q. And you told them that you believed his first name was  
25 Glenn because that name Glenn had been mentioned to you in 2008

E8bnchr3

Baynes - cross

1 or 2009?

2 A. Like around '010.

3 Q. In 2010. How long before the events of December 15, 2010,  
4 the day of the robbery and the shooting, was the name Glenn  
5 mentioned to you?

6 A. It was after when I was talking to somebody about it.

7 Q. When you were talking to somebody?

8 A. Yeah.

9 Q. And the somebody that you were talking to was who?

10 A. A cousin of mine.

11 Q. A cousin of yours?

12 A. Yes.

13 Q. The cousin of yours who you were speaking to had a name?

14 A. Yes.

15 Q. And that cousin's name was?

16 A. Sadea.

17 Q. Sadea?

18 A. Sadea.

19 Q. Sadea?

20 A. Sadea, Sadea, Sadea.

21 Q. Sadea?

22 A. Yes.

23 Q. Male or female?

24 A. Male -- I mean female, female.

25 Q. Female. You recall the questions that you were asked by

E8bnchr3

Baynes - cross

1 Mr. Goltzer, the first defense attorney, last Thursday I guess,  
2 about the various stories you told in the hospital to the  
3 police.

4 Do you remember that?

5 A. Yes.

6 Q. In the stories to the police you mentioned various names.  
7 You mentioned Bash and Baby E, correct?

8 A. Yes.

9 Q. And you mentioned Raymond, correct?

10 A. Yes.

11 Q. And you mentioned J-Mark, did you not?

12 A. No.

13 Q. Well, isn't it a fact that when you spoke to the police  
14 from the hospital that you did in fact mention J-Mark?

15 A. No.

16 Q. When you say J-Mark, do you know who I'm referring to?

17 A. Yes.

18 Q. I'm referring to the fellow who is in Exhibit 220. Can we  
19 put that up, please. That is J-Mark.

20 A. Yes.

21 Q. Do you deny mentioning J-Mark to the police in the  
22 hospital?

23 A. Yes.

24 Q. Do you recall the telling the police in the hospital --  
25 3501-2, page 6 -- the person you had described as a heavysset

E8bnchr3

Baynes - cross

1 guy called J-Mark?

2 A. No, I never said that. I never knew J-Mark ever had a part  
3 in this.

4 Q. Say again?

5 A. I never even knew J-Mark had a part in this. I never said  
6 J-Mark, ever.

7 Q. But you certainly didn't mention it in your direct  
8 testimony here, did you?

9 A. I never knew J-Mark. I knew him, but I didn't know he ever  
10 was in this case.

11 Q. Well, didn't you tell the police in the hospital that while  
12 you were on the porch at Dubois that the heavysset guy called  
13 J-Mark?

14 A. No.

15 Q. Didn't you tell the police in the hospital that the  
16 heavysset guy told Baby E and Bash that he was calling J-Mark?

17 A. No.

18 Q. And that this was one of the things you overheard while you  
19 were on the porch?

20 A. No.

21 Q. Isn't that one of the things that you told Detective  
22 Cortez?

23 A. No.

24 Q. Do you remember when you were arrested in April of 2011  
25 that the prosecutors when you were first brought to court had

E8bnchr3

Baynes - cross

1 to relay a certain notice of the statements that you had made  
2 earlier to the police?

3 Do you remember that?

4 A. No.

5 Q. Right? They provided a notice in court, notice to  
6 defendant of claimed statements that the defendant had made to  
7 the police. You recall that, right? Their claims?

8 A. No.

9 Q. You don't remember? You don't remember the Judge and  
10 everybody being told in court in front of you when you were  
11 arrested that one of the statements that it was claimed that  
12 you made was that you had told the police that the heavysset guy  
13 told Baby E and Bash that he was calling J-Mark?

14 A. No.

15 Q. But, in any event, you deny now as you sit here that you  
16 mentioned J-Mark at all during the hospital interviews of you,  
17 is that correct?

18 A. Yes.

19 Q. Now, you remember testifying about a fight that you had  
20 with Bash?

21 A. Yes.

22 Q. When was the fight that you had with Bash?

23 A. We had two. It was in the wintertime of '010.

24 Q. In the wintertime of 2010?

25 A. Yes.

E8bnchr3

Baynes - cross

1 Q. When you say the wintertime of 2010, just to clarify that,  
2 December 15 of 2010 when the events involving the robbery and  
3 the shooting at 54 Chambers Street, do you consider that the  
4 wintertime of 2010, or are you talking about a year earlier,  
5 January, February of 2010?

6 A. It was fall, fall, winter. It was around this -- it was  
7 before December, like November, September, around there.

8 Q. You are talking then about late 2010?

9 A. Yes.

10 Q. Not 2009?

11 A. No.

12 Q. Not early 2009?

13 A. No.

14 Q. So, when you say wintertime of 2010, what you are talking  
15 about is that period of time right around the time of the  
16 robbery and the shooting at 54 Chambers?

17 A. Yes.

18 Q. And what was the reason for the fight with Bash?

19 A. I don't know. He just didn't like me for some reason.

20 Q. He just?

21 A. Didn't like me for some reason.

22 Q. He just didn't like you for some reason. All right.

23 Do you recall having been interviewed about the fight  
24 with Bash?

25 A. No -- yes.

E8bnchr3

Baynes - cross

1 Q. Do you remember who interviewed you?

2 A. I don't remember.

3 Q. Do you recall telling law enforcement authorities that the  
4 reason for fighting Bash had something to do with J-Mark?

5 Do you recall that now?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

9 Q. Right. It had something to do with J-Mark, correct?

10 A. Yes.

11 Q. What did it have to do with J-Mark?

12 A. J-Mark asked me who I was. After I told him that, then  
13 that's when me and Bash fought. But J-Mark started, like, he  
14 was pointing out who I was.

15 Q. J-Mark was pointing out --

16 A. Who I was.

17 Q. Who you should fight?

18 A. No I guess they was supposed to fight me before, and Bash  
19 didn't know who I was. Once J-Mark saw me, he pointed out who  
20 I was, that I was the person, and that's when Bash punched me  
21 and we started fighting.

22 Q. Did you have the conversation with J-Mark the same day that  
23 you had the fight with Bash?

24 A. It was right there. He asked -- it happened two seconds  
25 apart.

E8bnchr3

Baynes - cross

1 Q. But on direct examination you said you didn't remember the  
2 reason that you had the fight with Bash, correct?

3 A. I said I didn't have no reason to fight him. I said I  
4 guess he didn't like me. I don't know what was the reason.

5 THE COURT: Mr. Buchwald, would this be a good time to  
6 break?

7 MR. BUCHWALD: If we could have three more minutes  
8 just to finish this area.

9 THE COURT: Sure.

10 MR. BUCHWALD: OK.

11 Q. So, in connection with the fight with Bash, you didn't  
12 mention J-Mark in your direct testimony, correct?

13 A. No.

14 Q. You also spoke to J-Mark after the events of December 15,  
15 2010, did you not?

16 A. Yes.

17 Q. You spoke to him about a Joker robbery homicide, did you  
18 not?

19 A. No, no. He just said that --

20 Q. I'm asking you, did you speak to him about the Joker  
21 robbery homicide?

22 A. Yes. A little bit, but --

23 Q. How many times did you speak to J-Mark about the Joker  
24 robbery homicide after the events of December 15, 2010?

25 A. That one time. It wasn't really about the homicide. It

E8bnchr3

Baynes - cross

1 was just, he said that the cops kicked in his door looking for  
2 guns for that case.

3 Q. Well, he told you, did he not, that L-1 had something to do  
4 with that homicide, didn't he?

5 A. No.

6 MR. NAWADAY: Objection.

7 THE COURT: Sustained.

8 Q. Shortly after the homicide, you left town, did you not?

9 A. Yes.

10 Q. You went down south someplace?

11 A. Yes.

12 Q. How long did you stay?

13 A. Like two weeks. Two or three weeks.

14 Q. Incidentally, when did you get out of the hospital?

15 A. Like two days, three days after.

16 Q. Then you went down south and then you came back?

17 A. Yes.

18 Q. When was the conversation that you had with J-Mark?

19 A. That was after I got arrested.

20 Q. Say again?

21 A. After I got arrested.

22 Q. After you got arrested, you had the conversation with  
23 J-Mark?

24 A. Yes.

25 Q. That was once you were in jail?

E8bnchr3

Baynes - cross

1 A. Yes.

2 Q. Was he in jail with you?

3 A. Yes. But for a different --

4 Q. Say again?

5 A. He was in jail for something different.

6 Q. That is Orange County jail?

7 A. Yes.

8 Q. How often did you speak to J-Mark about -- well, how often  
9 did you speak to him while you and he were in Orange County  
10 jail?

11 A. I didn't really -- we went to court together. That was the  
12 only time we spoke together, that one time.

13 Q. Now, isn't it a fact that J-Mark told you that Big L had  
14 something to do with the homicide?

15 A. No.

16 Q. You deny having told the prosecutors on March 1, 2012, the  
17 federal prosecutors, that J-Mark told you that Big L had  
18 something to do with the homicide?

19 A. Yes.

20 Q. Who is Big L?

21 A. I don't know.

22 Q. You don't know him?

23 A. I don't know.

24 Q. The heavysset guy, who is the heavysset?

25 A. L-1. That's who I was thinking Big L was, but I don't know

E8bnchr3

Baynes - cross

1 for a fact.

2 Q. You deny having told the prosecutors that either L-1 or Big  
3 L had something to do with the Joker homicide?

4 A. I didn't never know L-1's name. Once I saw the picture of  
5 him, that's when I said, yeah, that's him.

6 Q. You deny having told the prosecutors that J-Mark,  
7 Government Exhibit 220, told you that Big L had something to do  
8 with the homicide?

9 A. Yes.

10 MR. BUCHWALD: This would be a good place to break.

11 THE COURT: OK. Ladies and gentlemen, it's now 10  
12 minutes of 1. So please make sure to be in the jury room no  
13 later than 5 minutes after 2.

14 Please, if you are going to leave the building, do  
15 allow for the possibility that when you come back there may be  
16 a line at the security door. So do allow for that. We'll see  
17 you in the jury room 5 minutes after 2.

18 Until then, do not discuss the case.

19 (Jury not present)

20 THE COURT: Mr. Baynes, you may step down. I do have  
21 a 12:30 that is now about 20 minutes late. I will be ready as  
22 soon as we can clear out.

23 (Witness not present)

24 MR. BAUER: Judge, sorry.

25 THE COURT: Sure.

E8bnchr3

Baynes - cross

1 MR. BAUER: Very briefly, with regards to witnesses, a  
2 reminder that after lunch we are going interrupt Mr. Baynes'  
3 cross for Dr. Ely.

4 THE COURT: OK.

5 MR. BAUER: We anticipate that will be, with all in,  
6 about an hour.

7 THE COURT: OK.

8 MR. BAUER: So then we can resume Mr. Baynes.

9 Just talking to defense counsel, I think Mr. Baynes  
10 will likely be done today, and we have one witness, one  
11 Newburgh PD officer, Kevin Lahar. I think that we'll get to  
12 him as well. My question is, if it's 4:45 or so and we're done  
13 with PO Lahar, we could have another cooperating witness here  
14 to begin if you would like, although we have people with  
15 vacation plans who need to testify tomorrow. So it's our  
16 preference with apologies to the Court, that if we end  
17 somewhere between 4:30 and 5 o'clock that we adjourn for the  
18 day rather than put on -- it would be Jamar Mallory. We would  
19 put him on for just a very brief introductory testimony and  
20 then interrupt it with at least two witnesses tomorrow.

21 THE COURT: OK. Let's see where we are.

22 MR. BAUER: I just need to tell the marshals whether  
23 to have him here or not, which we can do obviously.

24 THE COURT: Why don't you have him here.

25 MR. BUCHWALD: What was the answer.

E8bnchr3

Baynes - cross

1 THE COURT: Yes, have him here.

2 MR. BUCHWALD: We have one concern; namely, we  
3 understand Thursday people were leaving, whatever, maybe it was  
4 at the MCC, that the three defendants were all put in the same  
5 elevator with a witness who is to testify later on. I think  
6 it's Mr. Evans. So we ask that everybody try to avoid this as  
7 best as possible. We may be increasing it if we have both  
8 Baynes and Mallory.

9 THE COURT: I'm sorry. What is your concern? That  
10 the cooperators not be put in the with the defendants or that  
11 the --

12 MR. BUCHWALD: They were all in the same elevator the  
13 other day. I think that was at the MCC as I understand it. I  
14 just mention it to alert the marshals to the sensitivity of it,  
15 but it may be a reason to not actually have Mallory up here  
16 today for the ten minutes.

17 THE COURT: I don't discern anything in what you said  
18 that requires my involvement.

19 MR. BAUER: Thank you, your Honor.

20 THE COURT: But do have Mr. Mallory this afternoon. I  
21 can't imagine why Dr. Ely would be on the stand for more than  
22 an hour or even an hour.

23 MR. BAUER: Agreed.

24 THE COURT: OK.

25 (Luncheon recess)

E8B9CHR4

1 AFTERNOON SESSION

2 2:06 p.m.

3 (Trial resumed; jury not present)

4 THE COURT: Do we have Dr. Ely.

5 MR. BAUER: She's ready to go. Would you like to have  
6 her come to the stand?

7 THE COURT: It would be nice to hear a witness for a  
8 change.

9 MR. NAWADAY: I don't know what you're talking about.

10 THE COURT: Okay. We're bringing out the jury.

11 (Continued on next page)

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E8B9CHR4

1 (Jury present)

2 THE COURT: Everyone please be seated.

3 Ladies and gentlemen, we are going to continue with  
4 the cross-examination of Mr. Baynes in just a little bit. The  
5 parties have agreed to take this one witness out of turn.  
6 Mr. Nawaday, do you want to call your next witness.

7 MR. NAWADAY: The government calls Susan Ely.

8 THE COURT: Please speak directly into the microphone  
9 and please begin by stating your full name and spelling your  
10 first and last name for the record.

11 THE WITNESS: Dr. Susan S-U-S-A-N; last name Ely  
12 E-L-Y.

13 SUSAN ELY,

14 called as a witness by the Government,

15 having duly been sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. NAWADAY:

18 Q. Are you currently employed?

19 A. Yes, I am.

20 Q. Where do you work?

21 A. I work full time at the Office of Chief Medical Examiner  
22 for the City of New York.

23 Q. What's your title?

24 A. I am deputy chief medical examiner for the Bronx County.

25 Q. What are your duties and responsibilities as a deputy chief

E8B9CHR4

Ely - direct

1 for the Bronx County ME's Office?

2 A. I'm in charge of overseeing the running of that office in  
3 terms of overseeing the professional staff and all of the other  
4 departments as well as doing medical/legal death investigation  
5 on certain cases of my own.

6 Q. What does the ME's office do generally?

7 A. The ME's office is a city agency in charge of investigating  
8 certain kinds of deaths that have occurred in the city and all  
9 boroughs. Those kinds of deaths include deaths due to  
10 intoxications or poisonings; any kind of sudden unexplained or  
11 unexpected death; any violent death, including deaths related  
12 to criminal deaths, meaning homicides or suicides; accidents,  
13 including both violent accidents like motor vehicle accidents,  
14 as well as chemical accidents like intoxications from  
15 recreational drug use or abuse; any kind of death that's  
16 related to a therapeutic or diagnostic procedure that takes  
17 place in a hospital or a clinic; any kind of unexplained  
18 childhood death; and deaths that occur under unusual  
19 circumstances or have public health importance.

20 Q. Is the ME's office part of any law enforcement agency?

21 A. No.

22 Q. Please describe your educational background.

23 A. I received my bachelor's of science degree at the  
24 University of Maryland. And that was followed by receiving a  
25 medical degree in master's of public health and tropical

E8B9CHR4

Ely - direct

1 medicine at Tulane University. Followed by residency training  
2 and internship training after medical school here in New York;  
3 including one year in pediatrics and child psychiatry, one year  
4 internal medicine, and four years in the study of pathology,  
5 both clinical and surgical pathology, and finally one year in  
6 specialty training within pathology in the area that I now  
7 practice which is forensic medicine or forensic pathology.

8 Q. What is pathology?

9 A. Pathology is the study of, in very general terms, is the  
10 study of disease and injury in people. Pathologists are  
11 medical doctors who in a hospital or a clinic setting diagnose  
12 things like cancer by looking at tissue under the microscope,  
13 or any other kind of disease, whether it's inflammation or  
14 infection or something else unusual. They also diagnose things  
15 like diabetes, or anemias, urinary tract infections, all those  
16 kinds of things in the laboratory setting.

17 A forensic pathologist goes on to further training to  
18 investigate certain kinds of deaths and injuries that occur  
19 under the specific circumstances that I've just described. We  
20 also look at injuries that occur in the living and try to  
21 understand the patterns of those injuries in order to answer  
22 questions about them.

23 Q. And forensic pathology?

24 A. The forensic pathology is just what I've described in terms  
25 of investigating and interpreting disease and injury,

E8B9CHR4

Ely - direct

1 particularly in the setting of certain kinds of deaths that  
2 fall under our jurisdiction.

3 Q. Are you licensed to practice medicine in any states?

4 A. Yes.

5 Q. Which ones?

6 A. In New York State.

7 Q. Are you board certified?

8 A. Yes.

9 Q. What does that mean?

10 A. Board certification for a physician means that that doctor  
11 has taken either written and/or an oral exam after undergoing  
12 training in that specific field. For instance, if you've  
13 trained in cardiology after training in internal medicine, you  
14 would be eligible to take an examination in that field; and if  
15 you pass it -- the examination is given by other leaders in  
16 that field. And if you pass it, you are deemed board  
17 certified, which is not a requirement to practice. It just  
18 gives an added level of expertise recognized by the people in  
19 your field.

20 Q. Have you performed any autopsies before?

21 A. Yes.

22 Q. And what is the purpose of an autopsy?

23 A. Well, first of all, an autopsy is a medical physical  
24 examination of a person after they've passed away. It first  
25 includes doing an external examination of an individual, taking

E8B9CHR4

Ely - direct

1 a look at any general characteristics of that person, hair  
2 color, hair length, the presence or absence of tattoos or  
3 scars, height, weight, etc. Also during that external part of  
4 examination any evidence of disease or injury is made note of.

5 After that and after X-rays that are sometimes taken  
6 and photographs, incisions are made on the scalp, on the chest  
7 and on the abdomen in order to look at the internal organs and  
8 tissues for any evidence of disease or injury.

9 These autopsies are performed typically as part of an  
10 investigation into the kinds of deaths that I have previously  
11 described so that a cause and manner of death can be  
12 determined.

13 Q. Approximately how many autopsies have you conducted in your  
14 career?

15 A. Over 2700.

16 Q. Have you testified in the past as an expert in forensic  
17 pathology?

18 A. Yes.

19 Q. And about how many times have you done that?

20 A. 110 to 115 times.

21 Q. Have you been qualified as an expert in forensic pathology  
22 in both state and federal court?

23 A. Yes.

24 MR. NAWADAY: Government offers Dr. Ely as an expert  
25 witness in forensic pathology.

E8B9CHR4

Ely - direct

1 THE COURT: Any objection?

2 MR. BUCHWALD: No objection.

3 THE COURT: Very well. Her testimony will be received  
4 as an expert in forensic pathology.

5 BY MR. NAWADAY:

6 Q. Dr. Ely, besides your work at the New York City ME's office  
7 do you also from time to time conduct autopsies for other  
8 municipalities?

9 A. I did in the past.

10 Q. And about how often did that occur?

11 A. Sometimes it was as frequently as once a month or twice a  
12 month.

13 Q. And why does it typically occur that a particular  
14 municipality calls upon an ME from a different office?

15 A. It might just have a need in terms of staffing for more  
16 medical examiners at any given time.

17 Q. What municipalities have you conducted autopsies for?

18 A. Besides New York City?

19 Q. Yes.

20 A. Orange County, New York.

21 Q. And when you testify with regard to an autopsy, you've  
22 conducted for another municipality, are you typically  
23 compensated?

24 A. Yes.

25 Q. And are you being paid by the government for your time

E8B9CHR4

Ely - direct

1 today and for the time you spent in preparing for your  
2 testimony?

3 A. Yes.

4 Q. How much are you being paid?

5 A. \$2,500 a day.

6 Q. Going back to autopsies in general terms, and I think  
7 you've probably already answered this, but can you detail the  
8 steps you take generally in conducting an autopsy?

9 A. Yes. The external examination portion of the autopsy is  
10 sometimes preceded -- and in the case of Mr. Henry -- is  
11 preceded by both X-rays of the body and photographs.

12 Photographs are often taken in an ongoing fashion throughout  
13 the examination.

14 First, the external examination is conducted and any  
15 evidence of therapeutic intervention, any physical  
16 characteristics of that person and any injuries are noted.

17 Q. And then after the external examination, what happens next?

18 A. And then the internal examination portion of the autopsy is  
19 conducted and that's where the incisions are made on the scalp  
20 and on the chest and on the abdomen so that the internal organs  
21 and tissues can be examined for any abnormalities, any  
22 injuries, any notable findings and so that a cause of death can  
23 be determined.

24 Q. Is an autopsy report prepared typically?

25 A. Yes.

E8B9CHR4

Ely - direct

1 Q. I'm going to show you what's been marked for identification  
2 as Government Exhibit 440 and 440A. Please take a look at  
3 those and tell me if you recognize them.

4 A. Yes, I do.

5 Q. What do you recognize Government Exhibit marked for  
6 identification 440 to be?

7 A. 440 is a copy of the autopsy report for Jeffrey Henry  
8 conducted in Orange County on December 15, 2010.

9 Q. There's a signature at the end. The last page. Do you  
10 recognize it?

11 A. Yes.

12 Q. Whose signature is that?

13 A. That's my signature.

14 Q. Did you prepare this report, Government Exhibit 440 marked  
15 for identification?

16 A. Yes.

17 Q. And then Government Exhibit 440A. Do you recognize that?

18 A. Yes, I do.

19 Q. What do you recognize that to be?

20 A. This is page two of the autopsy notes also associated with  
21 Mr. Henry's autopsy which was case 0C10-606. This is the  
22 diagram portion of the autopsy notes and it shows the front and  
23 back, two dimensional general drawing of the human body with my  
24 handwriting or notes on it.

25 Q. Is this a diagram you prepared?

E8B9CHR4

Ely - direct

1 A. Yes.

2 Q. And were these documents prepared at or near the time when  
3 the autopsy was performed?

4 A. Yes.

5 Q. Made in the -- kept in the regular course of the medical  
6 examiner's office?

7 A. Yes.

8 MR. NAWADAY: Government offers Government Exhibit 440  
9 and 440A.

10 THE COURT: Any objection?

11 MR. GOLTZER: No objection.

12 THE COURT: There being no objection, Government  
13 Exhibits 440 and 440A will be received.

14 (Government's Exhibits 440 and 440A received in  
15 evidence)

16 MR. NAWADAY: Ms. McInerney, can you please put up  
17 Government Exhibit 440.

18 BY MR. NAWADAY:

19 Q. Dr. Ely, I think you should be able to see it in front of  
20 you on the screen.

21 Is this the autopsy report you prepared?

22 A. Yes, it is.

23 Q. I'd like to go to the second page just starting with the  
24 section labeled external examination. Please tell the jury  
25 generally what the external examination of Jeffrey Henry's body

E8B9CHR4

Ely - direct

1 showed.

2 A. The external examination for Mr. Henry showed a  
3 five-foot-ten-inch black man with -- who weighed 312 pounds.  
4 His appearance was consistent with the given age of 35 years.

5 He had evidence of having undergone some attempts at  
6 resuscitation. In other words, he had intravenous catheters  
7 and other kinds of catheters and tubes in his body that were  
8 put there when there was an attempt to revive him in the  
9 emergency department of St. Luke's Hospital.

10 He also had bags on his hands. Fastened at the  
11 wrists. These were placed there by law enforcement personnel  
12 prior to his arrival in my examination.

13 Q. You said he had -- his hands were bagged. Do you know why  
14 his hands were bagged?

15 A. It's not uncommon for somebody who has been shot and where  
16 there's an investigation by the police to cover the hands with  
17 bags in an attempt to preserve any trace evidence that may or  
18 may not be on the hands.

19 Q. Now, what time did you first begin conducting the autopsy  
20 of Mr. Henry?

21 A. It was 2 p.m. on December 15, 2010.

22 Q. Do you know around what time Mr. Henry was pronounced dead?

23 A. He was pronounced dead, I believe it was -- it was 2:25 in  
24 the morning on the same day, I believe.

25 Q. There's a section marked clothing.

E8B9CHR4

Ely - direct

1 A. Yes.

2 Q. Did you examine any clothing?

3 A. I did.

4 Q. And what did your examination of the clothing show you, if  
5 anything?

6 A. The clothing that I examined was not on his body when he  
7 was received to the Orange County morgue. It actually was  
8 received with him and consisted of one long-sleeved white  
9 thermal shirt, one white tank top, and one white T-shirt as  
10 well as a pair of boxer shorts.

11 All of the shirts that were received and that I  
12 examined had defects on them that were consistent with the  
13 gunshot wound injury that he sustained to his body.

14 Q. And based on your examination of Mr. Henry, how many  
15 gunshot wounds did you identify?

16 A. He had two gunshot wounds of his torso and one of his right  
17 upper arm. However, the one he sustained to his right upper  
18 arm entered the outside of the right upper arm and exited the  
19 inside of the right upper arm before reentering the torso. So  
20 even though there was a gunshot wound that went in and out of  
21 his right upper arm, it was -- it occurred together with the  
22 same gun shot wound injury and the same bullet that continued  
23 on into his torso. So the total of the injuries consisted of a  
24 total of two gunshot wounds or two firings of a gun. But there  
25 were -- it was a defect in the right upper arm and two defects

E8B9CHR4

Ely - direct

1 in the torso.

2 Q. What did you do with the clothing after you examined it?

3 A. It was submitted to a Newburgh police department detective  
4 who was present.

5 Q. In this report did you refer to the gunshot wounds in any  
6 particular manner?

7 A. I did.

8 Q. And how did you refer to them?

9 A. I labeled the gunshot wounds as A, B, and C arbitrarily.  
10 It doesn't indicate the sequence in which they were sustained.  
11 But just to distinguish one from the next, they were labeled A  
12 through C.

13 Q. And were these bullets that you recovered?

14 A. Yes. And one that I didn't mention was an old -- a bullet  
15 that was recovered from his body from an old gunshot wound that  
16 was not sustained at the same time as the injuries I had just  
17 mentioned.

18 Q. And what -- how did you refer to that bullet as?

19 A. That was labeled as C.

20 Q. Turning to page 3 of your report.

21 There's a section labeled A. Is that bullet A?

22 A. That's correct.

23 Q. Please describe the gunshot wound or wounds associated with  
24 bullet A?

25 A. So bullet or gunshot wound A consisted of a penetrating

E8B9CHR4

Ely - direct

1 gunshot wound of the left side of Mr. Henry's torso.

2 When I say it's a "penetrating gunshot wound" that  
3 means the bullet entered his body but did not exit the body.

4 It entered the body on the lower part of the left  
5 chest, not far from the bottom of the rib cage.

6 After entering that area of his body, it traveled in a  
7 steeply downward trajectory and went through the abdominal  
8 cavity and blood vessels and tissues of the pelvis before  
9 becoming lodged in the upper part of the left side or the lower  
10 part of the left buttock.

11 So the direction this bullet traveled was from front  
12 to back, slightly from left to right, and steeply downwards.

13 Q. When you say "steeply downwards," can you demonstrate what  
14 you mean by that?

15 A. Well, whenever a gunshot entrance wound is identified, its  
16 location from the body from the top of the head and from the  
17 midline in inches is measured.

18 When the bullet exits the body it creates an exit  
19 wound. And that wound is also measured from the top of the  
20 head and from the midline of the body to give its relative  
21 position to where it came in.

22 When a bullet lodges in the body and does not exit,  
23 the same measurement is taken of where that bullet came to rest  
24 from the top of the head and from the midline.

25 In the case of this gunshot wound A, the bullet

E8B9CHR4

Ely - direct

1 entered his body and traveled a little less than 15 inches down  
2 in his body; so more than a foot it traveled in length through  
3 his torso and into his left buttock and thigh area.

4 So when I say steeply downward, it didn't travel  
5 downward just a couple of inches, it traveled downward almost  
6 15 inches.

7 Q. Where did the -- that bullet end up?

8 A. That bullet ended up in the back top part of the left -- of  
9 the tissues of the left thigh and kind of the area of the lower  
10 left buttock.

11 MR. BUCHWALD: I'm sorry. Could you just have the  
12 last answer.

13 THE WITNESS: It lodged in the upper portion of the  
14 back of the left thigh near the thigh -- near the lower left  
15 buttock.

16 BY MR. NAWADAY:

17 Q. And in the report, in the first paragraph on page three the  
18 last sentence says "there's neither fouling or stippling"?

19 A. Yes.

20 Q. What does that mean?

21 A. The comment that there's neither fouling or stippling is  
22 referring to whether I saw any evidence of gun powder residue  
23 on the body. That's a general statement that's always made,  
24 the presence or absence of stippling, when a gunshot wound has  
25 been sustained. And what it means is when a gun is fired what

E8B9CHR4

Ely - direct

1 leaves the muzzle of the gun first is the bullet and what  
2 propels that bullet down the barrel is the combustion of gun  
3 powder, so fire and gas. And that pushes the bullet down the  
4 barrel so that what comes behind the bullet as it leaves the  
5 muzzle of the gun is burned gun powder, which is basically just  
6 soot or smoke, which means that gun powder has now burned.

7 But what may also follow that is unburned flakes of  
8 gun powder. And when those unburned powder flakes leave the  
9 gun, they're very lightweight, they are tiny, so they can only  
10 travel a short distance. The typical, the average distance  
11 that those flakes can travel if they follow a bullet out of the  
12 muzzle of a gun is anywhere from -- I should say is up to  
13 30 inches. So beyond 30 inches, they're not going to have the  
14 capacity to reach the body and create any injury or residue  
15 around the gunshot wound.

16 The soot or the burned gun powder residue is called  
17 fouling and that's even lighter weight than the actual flakes  
18 that might leave the gun. And so soot or burned gun powder can  
19 only travel to a maximum on average of six inches from the  
20 muzzle of the gun after it's fired.

21 So when the comment "no fouling or stippling is seen"  
22 it means that there is no soot or powder seen around the  
23 entrance wound and there are no tiny injuries or scrapes caused  
24 by the flakes that are seen around the injury.

25 However, I will say that even though it says that no

E8B9CHR4

Ely - direct

1 fouling or stippling is seen, when an individual is wearing  
2 clothing at the time that they're shot, the absence of fouling  
3 or stippling can't really be interpreted because the clothes  
4 are covering the skin around the wound. So if there was going  
5 to be any residue there, it would be found on the clothing.  
6 And the absence on the skin doesn't have as much significance  
7 or really interpretability.

8 Q. Looking at Government Exhibit 440A.

9 MR. NAWADAY: Ms. McInerney, if you can put that up.

10 Q. Whose handwriting is this?

11 A. This is mine.

12 Q. And you see there are the letters A and B circled on this  
13 diagram?

14 A. Yes.

15 Q. What do the As and the Bs refer to?

16 A. The As and Bs refer to the labeling of the gunshot wounds  
17 that I described in my report.

18 Q. And on this diagram is there anywhere on the diagram where  
19 the entrance wound for gunshot A is set forth?

20 A. Yes.

21 Q. Where is that?

22 A. That is on the left side of the body as shown in the  
23 forward-facing diagram, below and towards the midline from the  
24 left nipple.

25 MR. NAWADAY: Zoom in.

E8B9CHR4

Ely - direct

1 Q. Is it where it's highlighted?

2 A. Yes.

3 Q. And then which way -- so that's the entrance wound; am I  
4 right?

5 A. That's right.

6 Q. Which way did that bullet travel through the body?

7 A. So it traveled from front to back. It traveled slightly  
8 left towards the right and downwards as I mentioned before,  
9 steeply downwards.

10 Q. Is it set forth on this diagram where the bullet was found?

11 A. Yes.

12 Q. Where is that?

13 A. It's shown by an X and a label A to the left of and below  
14 the general area of the groin.

15 Q. What effect, if any, did the bullet have by passing through  
16 the body in such a manner?

17 A. It went through tissues and blood vessels and it caused  
18 internal bleeding.

19 Q. Did you find this bullet?

20 A. Yes.

21 Q. What did you do with it when you found it?

22 A. I retrieved it from the body. I etched the letter A on the  
23 base of the bullet. And I submitted it to the detective who  
24 was present from the Newburgh police department.

25 Q. Are you able to tell what caliber bullet it is?

E8B9CHR4

Ely - direct

1 A. Not specific caliber.

2 Q. I want to move on to gunshot wound B. Turning back to  
3 Government Exhibit 440.

4 Do you see the section B on page 3?

5 A. Yes.

6 Q. Please describe your observations and conclusions with  
7 respect to gunshot wound B.

8 A. So gunshot wound B consisted of a wound where the bullet  
9 went through the right upper arm and then reentered the torso  
10 before it came to rest in the left pelvis. So even though the  
11 arm and the torso were both injured, the combination of those  
12 two injuries constituted one firing of a gun.

13 The bullet first entered the outside of the right  
14 upper arm. It went through the tissues and muscles of the  
15 upper arm, the right upper arm without going through the bone  
16 of the upper arm. And then exited from the inside portion of  
17 the upper arm not far from the biceps region.

18 It then reentered the right side of the chest, torso,  
19 and went through the lower part of the right chest cavity, the  
20 diaphragm, the liver and gallbladder, the bowel, the intestines  
21 in multiple locations, and then the pelvis before coming to  
22 rest next to the pelvic bone on the left side. So it crossed  
23 over from the right side of his body to the left side of his  
24 body and went downward before coming to rest.

25 Q. Do you see in the first paragraph under section B?

E8B9CHR4

Ely - direct

1 A. Yes.

2 Q. Were there any typographical errors in that?

3 A. Oh, yes. So in the last sentence of that first paragraph  
4 under B it says that the exit wound from the arm is from the  
5 medial "left upper arm" is a typographical error. It should  
6 say right upper arm.

7 Q. So the bullet went through the right upper arm first?

8 A. Yes. It never went through the left arm.

9 Q. Also the next paragraph begins, "The bullet then apparently  
10 reenters the lateral right thorax."

11 What's the lateral right thorax?

12 A. Lateral right thorax refers to the side of the right chest  
13 wall, thorax meaning chest.

14 Q. Did you find this bullet?

15 A. Yes.

16 Q. Where did that bullet end up?

17 A. That bullet became lodged in -- just on the inside aspect  
18 of the left pelvic bone. It also went from right to left --  
19 I'm sorry. It went from right to left. It also went  
20 downwards. But it wasn't discernable whether it went front to  
21 back or back to front. It pretty much just went straight  
22 across the body from right to left.

23 MR. NAWADAY: Ms. McInerney can you please put up  
24 Government Exhibit 440A.

25 Q. Dr. Ely, can you show us where the entrance wounds relating

E8B9CHR4

Ely - direct

1 to gunshot wound B are set forth?

2 A. Yes. There's a small circle which represents the gunshot  
3 entrance wound on the outside aspect of the right arm in the  
4 diagram. And it's labeled as B. Yes.

5 Q. Is it that small circle right there on the front-facing  
6 right side of the right arm?

7 A. Yes. That's the first entrance wound.

8 And then the second hole that you highlighted that has  
9 B written to the left of it or on the left side of his body is  
10 the reentrance wound into the right thorax.

11 Q. And then where did the bullet travel after reentering in  
12 the right thorax?

13 A. So it crossed the body directly across from right to left,  
14 and it went downwards and became lodged in the left pelvis  
15 where the X and a B is noted.

16 Q. Did that bullet go through any internal organs?

17 A. Yes, it did.

18 Q. Which ones?

19 A. It traveled through the lower part of the right -- well  
20 through the chest wall, the rib cage, and then the lower part  
21 of the right chest cavity. It went through the right  
22 diaphragm, the liver, the gallbladder, the intestines in  
23 multiple locations, and blood vessels and tissues of the  
24 pelvis.

25 Q. And what effect, if any, did the bullet have by passing

E8B9CHR4

Ely - direct

1 through the body in that manner?

2 A. It caused internal bleeding as well.

3 The internal bleeding in the abdominal cavity was  
4 about a half a liter, 500 milliliters. There's about five to  
5 six liters of blood in anybody's body normally. So there's  
6 about a half a liter of internal bleeding in the abdominal  
7 cavity, which was contributed to by both gunshot wound A and  
8 gunshot wound B. And there was also a half a liter of internal  
9 bleeding in the space around the right lung, which was  
10 contributed to only by gunshot wound B, the one I just  
11 described.

12 Q. What did you do with this bullet after you found it?

13 A. This bullet I also removed from the body, I etched with the  
14 letter B on the base, and submitted to the same detective who  
15 was present from Newburgh police department.

16 Q. You said there was an old bullet you found from an old  
17 injury as well?

18 A. Yes.

19 Q. And do you see on this diagram where that old bullet was  
20 found?

21 A. Yes.

22 Q. Where is that?

23 A. It is -- there's an X marking -- an X marking on the -- in  
24 the right -- I'm sorry. In the left shoulder region.

25 Q. How could you tell that it was from an old injury?

E8B9CHR4

Ely - direct

1 A. Well there are several things. First of all, this bullet  
2 was found because Mr. Henry was X-rayed prior to autopsy. So a  
3 bullet was seen easily on X-ray.

4 But from the outside of the body there was no  
5 indication that there was a fresh defect in the skin,  
6 indicating that this was a new gunshot wound. There was a scar  
7 on the left shoulder which would potentially be consistent with  
8 an old gunshot entrance wound. But there was no new injury.

9 There was also healing. Healing within the -- around  
10 the bullet, which was lodged and stuck within the top of or the  
11 head of the long bone in the upper arm called the humerus.  
12 There was no bleeding. There was no bullet path. There was  
13 only healing and scarring, indicating that this was an old  
14 gunshot wound injury and had not been sustained at the same  
15 time that these other wounds had been sustained.

16 Q. Did you remove that bullet as well?

17 A. Yes.

18 Q. And what did you do with that bullet?

19 A. That was also submitted to the detective present.

20 Q. Was toxicology testing done in this case?

21 A. Yes.

22 Q. And what is toxicology testing?

23 A. Toxicology testing is testing of blood and fluids and any  
24 other tissues in the body for prescription drugs, drugs of  
25 abuse, or alcohol.

E8B9CHR4

Ely - direct

1 Q. What did the toxicology testing in Mr. Henry's case show,  
2 if anything?

3 A. It showed chemicals found in marijuana as well as  
4 phencyclidine which is known as PCP.

5 I'm sorry. He also had alcohol in his system.

6 Q. Are you able to draw any conclusions about the immediate  
7 impact on Mr. Henry, if any, right after he was shot?

8 A. The immediate impact would be that he would immediately  
9 start to bleed internally and somewhat externally as a result  
10 of these wounds.

11 When a gunshot wound injury causes immediate  
12 incapacitation or death, meaning that the person is unable  
13 to -- when they become flaccid and fall in their tracks and are  
14 unable to have any voluntary movements or purposeful movements,  
15 that's called a gunshot wound that has immediate stopping power  
16 or incapacitation. An example of that kind of gunshot wound  
17 would be a bullet that travels through the brain, the vital  
18 parts of the brain, or through the upper part of the spinal  
19 cord, rendering that person unable to move and sometimes causes  
20 them to die immediately or very shortly after the wound is  
21 sustained.

22 In this case, that kind of wound was not sustained.  
23 The kind of impact that these wounds would cause, in  
24 combination -- at least the two to the torso -- would be  
25 internal bleeding which takes on the order of minutes to

E8B9CHR4

Ely - direct

1 accumulate as opposed to seconds. Can't take longer than  
2 minutes.

3 Q. Based on your expert opinion would Mr. Henry be able to be  
4 mobile after these two gunshot wounds?

5 A. He could.

6 Q. And for about how long?

7 A. I would say minutes or less.

8 Q. I'm going to show you what's been marked just for  
9 identification as Government Exhibits 63, 64, and 65.

10 Do you recognize those?

11 A. Yes.

12 Q. Did you review -- look at those before testifying today?

13 A. Yes.

14 Q. And what do they appear to be?

15 A. These appear to be bullets consistent with the ones that I  
16 removed from Mr. Henry's body in that they have a copper  
17 coating on the outside of the bullet. It's called a copper  
18 jacket. They're not deformed. And they have etchings on the  
19 bottom of A and B.

20 There's also a bullet that's still encased somewhat in  
21 bone. That was the -- that is the bullet removed from the --  
22 the old bullet removed from his left shoulder.

23 MR. NAWADAY: Government offers Government Exhibits  
24 63, 64, and 65.

25 MR. BUCHWALD: No objection.

E8B9CHR4

Ely - direct

1 THE COURT: 63, 64, and 65 will be received.

2 (Government's Exhibits 63, 64, and 65 received in  
3 evidence)

4 BY MR. NAWADAY:

5 Q. Dr. Ely, based on your -- the autopsy you conducted of  
6 Mr. Henry, have you reached a conclusion regarding the cause of  
7 his death?

8 A. Yes.

9 Q. What is it?

10 A. Gunshot wounds of torso and upper extremity with  
11 perforations of chest wall, liver, bowel, and blood vessels.

12 Q. In your opinion did bullet C have anything to do with the  
13 cause of death?

14 A. No.

15 Q. So it was bullet A and bullet B?

16 A. That's correct.

17 Q. Did you reach any conclusion regarding the manner of death?

18 A. Homicide.

19 MR. NAWADAY: No further questions.

20 THE COURT: Thank you.

21 Any cross-examination?

22 MR. BUCHWALD: Thank you.

23 CROSS-EXAMINATION

24 BY MR. BUCHWALD:

25 Q. Good afternoon, Dr. Ely.

E8B9CHR4

Ely - cross

1 A. Good afternoon.

2 Q. Let me just go through your report again. This is Exhibit  
3 440. Do you have that in front of you?

4 A. I do.

5 Q. If we can put it up on the screen again.

6 Direct your attention to the first page under external  
7 examination. So I guess the next page.

8 Am I correct that Mr. Henry was a large man? You  
9 measured him at five-ten, 312 pounds; is that correct?

10 A. Yes.

11 Q. You took or there were certain photographs taken of the  
12 body; is that correct, in connection with the autopsy?

13 A. Yes.

14 Q. You checked his extremities to see if there were any track  
15 marks, drug track marks; is that right?

16 A. Yes.

17 Q. And did not find any discernable track marks. Am I  
18 correct?

19 A. Yes.

20 Q. And then I think you indicated that you also checked his --  
21 the clothing.

22 I assume the clothing had all been removed by the time  
23 the autopsy was performed; is that right?

24 A. That's correct.

25 Q. I take it the policemen or the hospital had custody of it

E8B9CHR4

Ely - cross

1 at that point?

2 A. At the time of the autopsy, it was with him, brought by the  
3 police.

4 Q. Brought by the police.

5 And so you were able to check to see if the holes in  
6 the shirt and the other clothes matched the wounds that you  
7 found on his body?

8 A. Yes.

9 Q. And am I correct -- withdrawn.

10 Did you perform tests on the clothes?

11 A. No.

12 Q. That's not something you do, correct?

13 A. No.

14 Q. To determine if there is soot or any kind of foreign object  
15 on the clothes; is that right?

16 A. That's correct. I don't perform those tests.

17 Q. You don't perform them.

18 But if there was no -- withdrawn.

19 You indicated that with respect to each of the wounds  
20 you found neither fouling nor stippling; is that right?

21 A. That's right.

22 Q. And am I correct putting aside the question of the clothes,  
23 if there had been direct wounds to the body the absence of  
24 fouling or stippling would have suggested, would it not, that  
25 the weapon that was used to shoot Mr. Henry was at least

E8B9CHR4

Ely - cross

1 30 inches away from his body?

2 A. Yes. If his skin was exposed and not covered by anything,  
3 including clothing, at the time of the firing of the gun, the  
4 absence of soot around the wound and the absence of injuries  
5 caused by powder flakes would indicate that in all likelihood.

6 Q. And as you sit here you do not know whether there was soot  
7 or anything on the clothing?

8 A. I don't.

9 Q. And you do not know if the clothing was tested for soot or  
10 anything like that?

11 A. I don't.

12 Q. The clothing -- was that bagged in some way?

13 A. It was, yes, and submitted to the police department.

14 Q. And if the clothing were in evidence here and had been  
15 bagged properly it could still to this day be tested, couldn't  
16 it?

17 A. I presume so.

18 Q. Now, exhibits -- can I have 63, 64, and 65?

19 MR. BUCHWALD: May I approach, your Honor?

20 THE COURT: You may.

21 Q. Am I correct that Exhibits 64 and 65 correspond, if you can  
22 tell, to the bullets that killed Mr. Jeffrey?

23 A. Yes.

24 Q. And are you able to tell -- yes. Okay.

25 Can you see that these bullets correspond to item Nos.

E8B9CHR4

Ely - cross

1 72 and 74 from the Newburgh police inventory of evidence in the  
2 case?

3 A. Yes.

4 Q. And am I correct that you examined those bullets and  
5 included your visual impressions of those bullets in your  
6 report?

7 A. Yes.

8 Q. And am I correct with respect to bullet A you determined  
9 that the bullet is nondeformed and copper-jacketed?

10 A. Yes.

11 Q. And with respect to bullet B you determined that that  
12 bullet was nondeformed and copper-jacketed?

13 A. Yes.

14 Q. You didn't find anything unusual about the bullets?

15 A. Can you define what you mean by "unusual?"

16 Q. Deformed.

17 A. They were nondeformed.

18 Q. Now, I believe you testified, and wrote in your report at  
19 the bottom of that same page that we're on, where it says  
20 injuries, external and internal, if we can go down to that  
21 bottom paragraph.

22 You wrote, "The wounds are lettered arbitrarily; no  
23 sequence is implied."

24 Correct?

25 A. Correct.

E8B9CHR4

Ely - cross

1 Q. "There is also an old bullet found and embedded in the left  
2 humeral head with no discernable acute wound track," correct?

3 A. Correct.

4 Q. And that was bullet No. 63, correct?

5 A. Yes.

6 Q. That's the Exhibit No. 63. And Exhibit No. 63 indicates on  
7 it that it corresponds to item No. 73 in the Newburgh police  
8 department list of exhibits that they seized; is that right?

9 A. Partially covered by adhesive but it looks like a 73 to me.

10 Q. And I'm correct that among the ways that you know it's an  
11 old wound and not a new wound is that there is no internal  
12 tracking of injury around the bullet itself? Everything has  
13 healed?

14 A. Yes. It's all scarred and there is no blood and also there  
15 is no gunshot entrance wound and the bullet itself has  
16 oxidized. It looks older.

17 Q. So while the wounds are "labeled arbitrarily, no sequence  
18 is employed," have you no doubt that bullet C which corresponds  
19 to Exhibit 63 entered him long before the other two bullets?

20 A. That's right.

21 Q. But with respect to A and B, what you're saying is you  
22 don't know which one entered first?

23 A. Yes. I do not.

24 Q. And the fact that you called one A doesn't -- one of them A  
25 and one of them B doesn't mean that you think A entered first.

E8B9CHR4

Ely - cross

1 You just don't know which one entered first?

2 A. Yes. It could have. But I don't know.

3 Q. An injury of this type, it would be highly unusual to be  
4 able to figure out which one entered first?

5 A. In this specific scenario, yes.

6 Q. Now, I just -- visually sometimes it's easier with a body  
7 than with a schematic. So if you could see me. All right.

8 Am I correct that there are -- do you know the results  
9 of the ballistics report and that the two bullets were  
10 determined to have been fired from the same gun?

11 A. I don't.

12 MR. NAWADAY: Objection.

13 THE WITNESS: I'm sorry.

14 BY MR. BUCHWALD:

15 Q. Am I correct that one of the bullets, I think you call it  
16 B, right, enters the right arm, comes out of the right arm,  
17 enters the chest on the side, travels through the body and ends  
18 up inside, in the upper -- I guess upper thigh area or would it  
19 be the --

20 A. No. That would be -- you're describing the location of  
21 bullet A. Bullet A is the one that lodges in the back of the  
22 thigh and buttock.

23 Q. So that was bullet A.

24 A. Bullet B which is the one you've just described the path of  
25 in the arm and the right torso lodges in the left pelvic area.

E8B9CHR4

Ely - cross

1 Q. So let me do that again. Okay. The one that goes through  
2 the right arm, comes out the right arm, comes into the chest on  
3 the side, and ends up inside about where my hand is, just below  
4 the belt level on the left side; is that correct?

5 A. Roughly.

6 Q. The other bullet -- you're going to remind me if it's B or  
7 A -- enters here, approximately and goes roughly, you say,  
8 steeply down?

9 A. Yes.

10 Q. Moving to the right slightly, and ending up in the body, in  
11 the thigh, upper thigh area?

12 A. In the back, yes.

13 Q. In the back.

14 So it travels then from left, slightly right, and  
15 steeply down?

16 A. And front to back.

17 Q. From front to back?

18 A. Yes.

19 Q. Whereas the first one is not level but gently down from  
20 right to left -- I say, first of all, the other one goes from  
21 right to left gently down?

22 A. I wouldn't use the word "gently." Actually, the downward  
23 trajectory of the one that comes in the right chest which is B  
24 also goes fairly significantly down. It's not as steep as A  
25 but they are both pretty steep in the body.

E8B9CHR4

Ely - cross

1 MR. BUCHWALD: If I could have just one moment, your  
2 Honor.

3 (Pause)

4 Q. And both bullets so far as you can tell moved in a  
5 generally straight direction as opposed to ricocheting off of  
6 bone?

7 A. That's correct.

8 Q. And the determination that the two bullets were  
9 9-millimeter bullets was not made by you?

10 MR. NAWADAY: Objection.

11 THE COURT: Yes. Assumes facts not in evidence.

12 MR. BUCHWALD: I believe it is in evidence, your  
13 Honor, from the ballistics, from the report that's in evidence.  
14 BY MR. BUCHWALD:

15 Q. You didn't make a determination as to the caliber of the  
16 bullets?

17 THE WITNESS: I can answer?

18 THE COURT: You can answer that.

19 THE WITNESS: I did not.

20 Q. You just made an observation that they were nondeformed?

21 A. And copper-jacketed, yes.

22 MR. BUCHWALD: If I might have just one moment again,  
23 your Honor.

24 THE COURT: Sure.

25 (Pause)

E8B9CHR4

Ely - cross

1 MR. GOLTZER: Very briefly.

2 MR. BUCHWALD: If I could have just one moment.

3 (Pause)

4 THE COURT: Are you done, Mr. Buchwald?

5 MR. BUCHWALD: I am, your Honor. Thank you.

6 THE COURT: Okay. Mr. Goltzer.

7 MR. GOLTZER: Thank you.

8 CROSS-EXAMINATION

9 BY MR. GOLTZER:

10 Q. Good afternoon, Doctor?

11 A. Good afternoon.

12 Q. I just have a couple of questions for you.

13 Would it be fair to say that the cause of death was  
14 really internal bleeding?

15 A. That's the mechanism of death. The cause of death is  
16 gunshot wound.

17 Q. Of course. But the gunshot wounds in combination caused  
18 internal bleeding?

19 A. The results of the gunshot wounds were internal bleeding  
20 and that's what led -- primarily what led to his death.

21 Q. But it wasn't a brain wound or a heart wound. That would  
22 have been instantaneous death. It would have been something he  
23 could have walked around for a couple of minutes?

24 A. He could have had some purposeful activity.

25 Q. One of the things you do not do as a medical examiner is

E8B9CHR4

Ely - cross

1 try to reconstruct exactly how something happened; is that  
2 correct?

3 A. I'm actually asked questions with regard to body positions,  
4 given hypotheticals, not uncommonly. From the autopsy, that's  
5 not typically determined.

6 Q. From the autopsy you cannot determine that?

7 A. From the autopsy alone.

8 Q. And these things happen in three dimensions; is that  
9 correct?

10 A. Well, again, particularly if you're involving two people,  
11 then there's more than one variable, than just -- I can tell  
12 you what the direction is in the body, but relative to other  
13 things.

14 Q. Whether it was somebody who was short or tall that fired  
15 the weapon, you can't determine that kind of thing?

16 A. I can't determine the height.

17 Q. Or the weight or anything like that?

18 A. From a gunshot wound, for the shooter? No.

19 Q. And basically when you say there is no fouling or  
20 stippling, the distance cannot be determined beyond -- it's at  
21 least 30 inches, but it could be up to the effective range of  
22 weapon?

23 A. I'm sorry. Could you --

24 Q. When there is no evidence of fouling or stippling soot, if  
25 you will, it's got to be at least 30 inches away but it can be

E8B9CHR4

Ely - cross

1 as far away as the effective range of the weapon?

2 A. Well, what -- I'm not really sure if I understand the  
3 question.

4 But beyond 30 inches on average for most handguns --

5 Q. But how far beyond 30 inches there is no way to know?

6 A. Oh, in other words, once it's beyond 30 inches it's called  
7 a distant gunshot wound and, you know, four feet can look the  
8 same in terms of the injury on the body as, you know, farther  
9 than that.

10 Q. So as far as -- the weapon can be as far away as the weapon  
11 is capable of firing. You just don't know?

12 A. For a distant gunshot wound.

13 Q. And this appeared to be a distant?

14 A. No. I have no opinion about range because he was wearing  
15 clothing. I can't interpret the wound's range.

16 Q. And because you couldn't test the clothing you have no  
17 way --

18 A. It's not that I couldn't test it. I'm in charge of looking  
19 at the body. So the wounds themselves, given the fact that he  
20 was wearing clothing, are not interpretable in terms of range  
21 in and of themselves.

22 Q. So with respect to the distance of the wound, you have no  
23 opinion?

24 A. I don't have an opinion based on the autopsy findings.

25 MR. GOLTZER: Thank you, Doctor.

E8B9CHR4

Ely - cross

1 THE COURT: Any further cross-examination?

2 MR. STRAZZA: We have no questions.

3 THE COURT: Any further redirect?

4 MR. NAWADAY: No, your Honor.

5 THE COURT: Dr. Ely, you may step down.

6 (Witness excused)

7 THE COURT: May we get Mr. Baynes.

8 ANTHONY BAYNES, resumed

9 CROSS-EXAMINATION

10 (Continued on next page)

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E8bnchr5

Baynes - cross

1 THE COURT: Mr. Baynes, you are again reminded that  
2 you are still under oath. Please do keep your voice up when  
3 you respond to the questions.

4 Mr. Buchwald.

5 MR. BUCHWALD: Thank you, your Honor.

6 BY MR. BUCHWALD:

7 Q. Good afternoon, Mr. Baynes.

8 A. Good afternoon.

9 Q. Mr. Baynes, you referred in your testimony to some guy by  
10 the name or nickname of Smoke who sold weed. Do you recall  
11 that?

12 A. Yes.

13 Q. I think you testified that you and some other people, Quay  
14 Quay and Pooters and Dubose, assaulted Smoke at some point.

15 Do you remember that testimony from last Thursday?

16 A. Yes.

17 Q. My question to you is, when did that assault take place as  
18 best as you recall?

19 A. I just remember '010. It was in 2010.

20 Q. Do you recall, sir, I think you testified that you were  
21 suspended from school about three months before, you think you  
22 said three months before the December 15, 2010 robbery and  
23 shooting. Do you recall that testimony?

24 A. Yes.

25 Q. So were you suspended for that entire school year from the

E8bnchr5

Baynes - cross

1 school?

2 A. No, I did like a month or two.

3 Q. Did this assault on Smoke occur before you were suspended  
4 or after you were suspended?

5 A. I don't remember.

6 Q. You just don't remember at all?

7 A. No.

8 Q. Did it occur in toward the latter part of 2010, around the  
9 time of the shooting of Joker or in the early part of 2010?

10 A. The ending part.

11 Q. Say again?

12 A. The ending part, around the shooting.

13 Q. Around the time of the sheeting. How soon before or after  
14 the shooting?

15 A. It was before the shooting, but I don't know how --

16 Q. Just before like days? Weeks? Months?

17 A. Probably like months.

18 Q. So it happened after you were suspended from school?

19 A. I don't know.

20 Q. You don't know?

21 A. No.

22 Q. You referred to a fight with the Crips where you also tried  
23 to stab somebody with a knife. Do you recall that testimony?

24 A. Yes.

25 Q. Did that occur before or after the assault on Smoke?

E8bnchr5

Baynes - cross

1 A. I think before. It was --

2 Q. Was it before or after you were suspended from school?

3 A. Before.

4 Q. Was it in 2010 or 2009?

5 A. 2010.

6 Q. 2010. Thank you. Let me show you Exhibit 219 in evidence.

7 Who is that, if you know?

8 A. Danielle. Somebody by the name of Danielle.

9 Q. Sir, you have to keep your voice up?

10 A. Somebody by the name of Danielle.

11 Q. Was that Smoke's mother?

12 A. Or aunt. One of them. Mother or aunt.

13 Q. Do you know? Was it Smoke's mother or his aunt?

14 A. I don't know. It was two sisters. One of them was his  
15 mom, one his aunt.

16 Q. Now if we can show you what's previously been marked as  
17 Defendant Thomas Exhibit S for identification.

18 MR. BUCHWALD: May I approach, your Honor?

19 THE COURT: You may.

20 Q. Which is a photograph, is that right?

21 A. Yes.

22 Q. Do you recognize that person?

23 A. Kind of, yes, but I don't know who he is.

24 Q. Say again?

25 A. I seen him before, but I don't know who he is.

E8bnchr5

Baynes - cross

1 Q. You have seen him before?

2 A. Yes.

3 Q. Did he have a nickname?

4 A. He looks like a somebody named Stacks, but I don't know if  
5 that's him.

6 Q. Is this the Stacks you were referring to before?

7 A. Before that was -- that I was arrested with? That I was in  
8 the county with?

9 Q. During the questioning before about a Stacks.

10 A. Yes. That was --

11 Q. This is the Stacks?

12 A. Yes.

13 Q. Yes?

14 A. I told them I knew a couple of Stacks, a couple of people  
15 named Stacks.

16 MR. BUCHWALD: We offer Exhibit S for identification  
17 into evidence.

18 MR. NAWADAY: Your Honor, I don't think there is a  
19 foundation that he recognized who was in that photograph.

20 THE COURT: Well, Mr. Baynes, you said that you know a  
21 couple of people named Stacks. Was this would be of the people  
22 that you were referring to?

23 THE WITNESS: Yes.

24 THE COURT: You knew him as Stacks?

25 THE WITNESS: Yes.

E8bnchr5

Baynes - cross

1 THE COURT: The objection is overruled.

2 (Defendant's Exhibit Thomas S received in evidence)

3 Q. Where did you know this Stacks from?

4 A. School.

5 Q. Other than from school is that the only thing you knew  
6 about this Stacks?

7 A. He was in the county with me, too.

8 Q. He was?

9 A. In the county jail with me, too.

10 Q. Orange County jail?

11 A. Yes.

12 Q. Was he in Orange County jail when you got there?

13 A. Yes.

14 Q. Do you know how long he had been in Orange County jail when  
15 you got there?

16 A. No.

17 Q. Was there a fellow by the name of Ramone who was in Orange  
18 County jail when you got there?

19 A. I don't remember. I don't remember.

20 MR. BUCHWALD: Are we able at this point because it is  
21 not in evidence to just so the witness Government Exhibit 217  
22 for identification.

23 Q. Is there a photograph on your screen?

24 A. Yes.

25 Q. Do you recognize that individual?

E8bnchr5

Baynes - cross

1 A. Yes.

2 Q. Is that an individual who you knew as Ramone?

3 A. Yes.

4 Q. Did you have his last name? Ramone, did you ever hear the  
5 name McDermott?

6 A. No.

7 Q. Was there any other name you associated with Ramone?

8 A. I didn't know him like that. I just knew people he knew.

9 Q. Well, you knew the name Ramone?

10 A. Yes, from somebody he knew.

11 Q. I'm sorry. You have to speak up.

12 A. I knew it from one of the people that he got arrested with,  
13 his codefendant.

14 Q. You knew it from when he got arrested?

15 A. Yes.

16 Q. And he was in jail when you got to the Orange County jail,  
17 is that right?

18 A. Yes.

19 Q. You got to the Orange County jail on April 6 or April 7 of  
20 2011, correct?

21 A. Yes.

22 Q. This fellow was in the jail already, correct?

23 A. I think, yes.

24 Q. You knew him before out on the street a little bit,  
25 correct?

E8bnchr5

Baynes - cross

1 A. Not really. I seen him before, but I didn't know him.

2 Q. You had seen him before. What had you seen him doing?

3 A. Nothing, just walking by and stuff.

4 Q. So you had seen him on the street, and you knew him from  
5 the jail, is that right?

6 A. I guess, yes.

7 MR. BUCHWALD: We offer -- I will keep the government  
8 exhibit number if they don't mind -- Government Exhibit 217 for  
9 identification into evidence.

10 MR. NAWADAY: No objection.

11 THE COURT: 217 will be received.

12 (Government's Exhibit 217 received in evidence)

13 MR. BUCHWALD: If we can just show that now to  
14 everyone.

15 Q. When was the last time you saw Ramone?

16 A. Back in the county, when I was in the county still.

17 Q. You were in the county jail from April of 2011 until  
18 approximately May of 2012?

19 A. I think April, but --

20 Q. For a year or somewhat over a year, is that correct?

21 A. Yes.

22 Q. He was in that jail that whole time, correct?

23 A. I think, yes.

24 Q. While you were there, correct?

25 A. Yes.

E8bnchr5

Baynes - cross

1 Q. All right. You and he would chat at times, correct?

2 A. No.

3 Q. You never talked to him?

4 A. No.

5 MR. GREENFIELD: Could I hear that again, Judge?

6 THE WITNESS: No, no, I never talked to him.

7 Q. In fact, you recall there came a point in time when you  
8 spoke to the district attorney's office, Assistant District  
9 Attorney Haberman up in Orange County with your attorney. Do  
10 you remember that?

11 A. Yes.

12 Q. That was, I think, May 13 and May 20 and June 20 of 2011 or  
13 thereabouts, is that right?

14 A. Yes.

15 Q. Am I correct, after having those conversations with ADA  
16 Haberman, isn't it a fact that you spoke to Ramone, the Ramone  
17 in Exhibit 217, and told him the names of various people who  
18 you claimed had been involved in the Joker homicide who were in  
19 Orange County jail?

20 A. He was in a PC. We didn't never -- he was in the PC. We  
21 was never had contact with each other.

22 Q. Do you deny having told Ramone, the Ramone in Government  
23 Exhibit 217 --

24 A. Yes.

25 Q. The names of people who you claimed were at Orange County

E8bnchr5

Baynes - cross

1 jail and were involved in the Joker homicide?

2 A. Yes.

3 Q. You deny that?

4 A. Yes.

5 Q. Do you deny telling Ramone that you were the only person  
6 charged in the homicide, even though there were others there in  
7 the jail who you claimed were involved with you?

8 A. Yes.

9 Q. You deny that?

10 A. Yes.

11 Q. You deny that?

12 A. Yes, yes.

13 Q. When you say PC, what does PC mean?

14 A. Protective custody.

15 Q. It is your testimony that he was in PC and that you never  
16 spoke to him?

17 A. Yes.

18 Q. But you would see him now and then? Is that how you knew  
19 he was in jail?

20 A. I was with his codefendant that told me about him.

21 Q. So you didn't actually see him, you just heard about him  
22 from his codefendant?

23 A. No, when I first came to the jail, I was unclassified -- once  
24 you are unclassified, you are in the PC. I was there with him  
25 when I first came, I saw him, and when I left there, that's

E8bnchr5

Baynes - cross

1 when his codefendant told me.

2 Q. Who was his codefendant?

3 A. Dequan.

4 Q. Dequan?

5 A. Yes.

6 Q. The codefendant told you he was in PC?

7 A. Yes.

8 Q. Do you know if he went into PC after January of 2012?

9 A. He was there when I got there in 2011.

10 MR. BUCHWALD: If once again we might put on the  
11 screen just for Mr. Baynes at this time what's previously been  
12 marked as Government Exhibit 210 for identification.

13 Q. Do you see that, Mr. Baynes?

14 A. Yes.

15 Q. Do you know that person?

16 A. No.

17 Q. Do you know a person whose nickname is Snelly?

18 A. Yes, I heard of him.

19 Q. Do you know a person whose real name is Alton Junior?

20 A. No.

21 Q. But you know the name Snelly?

22 A. Yes, I heard it.

23 Q. Is this a photograph of Snelly?

24 A. I don't know what Snelly looks like.

25 Q. You don't know what Snelly looks like? You just heard the

E8bnchr5

Baynes - cross

1 name?

2 A. Yes.

3 Q. You have heard the name because prosecutors have asked you  
4 about Snelly?

5 A. No, I was arrested with his cousin.

6 Q. You were arrested with Snelly's cousin?

7 A. Yes.

8 Q. When you say you were arrested with Snelly's cousin, you  
9 mean on April 7?

10 A. No. I was in a federal MCC or in a house with one of his  
11 cousins.

12 Q. So, you weren't arrested with him, you happened to be in  
13 jail with him?

14 A. Yeah, yeah, yes.

15 Q. You mean after you were transferred to the MCC -- and the  
16 MCC being the jail in Manhattan, correct?

17 A. Yes.

18 Q. The federal jail in Manhattan, correct?

19 A. Yes.

20 Q. After you were transferred to the federal jail in  
21 Manhattan, the MCC, you were in touch with at the MCC somebody  
22 who you understood to be the cousin of Snelly?

23 A. Yes.

24 Q. You recognized Snelly from that, or do you recognize --

25 A. No.

E8bnchr5

Baynes - cross

1 Q. You don't recognize the picture?

2 A. No.

3 Q. But the name you recall?

4 A. Yes.

5 Q. Do you know the name of the cousin?

6 A. Rashan. Rashan Melvin I think.

7 Q. Rashan?

8 A. Melvin.

9 Q. Melvin?

10 A. Yes.

11 Q. Rashan Melvin. Now, you also testified about certain, I  
12 guess they were robberies or burglaries involving three people  
13 by the names of Geo, G, and Snipes. Do you remember that?

14 A. Yes.

15 Q. Showing you Government 211, do you recognize that  
16 photograph?

17 A. Yes.

18 Q. Is that Geo?

19 A. Yes.

20 Q. Let me show you what has previously been marked for  
21 identification as defendant Thomas Exhibit J for  
22 identification.

23 Are you able to identify that individual?

24 A. No.

25 Q. Do you know that individual?

E8bnchr5

Baynes - cross

1 A. Not from the picture.

2 Q. Can you tell us what G looks like?

3 A. Skinny, young, brown skin.

4 Q. Sorry, what's the last thing?

5 A. Brown skin.

6 Q. Brown skin. Let me show you Government Exhibit 218 in  
7 evidence. Can you identify this person?

8 A. Fuzzy.

9 Q. Fuzzy?

10 A. Yes.

11 Q. This is the person you know as Fuzzy?

12 A. Yes.

13 Q. Do you know him by any other name?

14 A. No.

15 Q. Let me show you Exhibit 220. Government Exhibit 220 in  
16 evidence. Do you know that person?

17 A. J-Mark.

18 Q. I think you testified that you knew J-Mark by other names,  
19 is that right?

20 A. No.

21 Q. Do you remember testifying on direct examination in  
22 response to Mr. Nawaday that you did know him by other names?

23 A. No.

24 Q. If you testified to that effect, it was a mistake?

25 A. Yes. I don't know him by nothing but --

E8bnchr5

Baynes - cross

1 Q. The only name you know J-Mark by is J-Mark?

2 A. Yes.

3 Q. Am I correct, sir, that J-Mark and Bash, you saw them  
4 selling drugs together?

5 A. Yes.

6 Q. How often would you see J mark and Bash sell drugs  
7 together?

8 A. I seen them twice. Twice.

9 Q. Twice?

10 A. Yes.

11 Q. When was that?

12 A. '010.

13 Q. In 2010 after you were suspended from school or before?

14 A. Probably around the same time.

15 Q. Around the same time?

16 A. Yes.

17 Q. After or before the assault on Smoke?

18 A. Probably -- after.

19 Q. It was after the assault on Smoke. Were the two times  
20 close in time to one another, or were they far apart? Were  
21 they separated?

22 A. They was close. This is all in around the same time.

23 Everything was --

24 Q. Within a couple of days?

25 A. A couple of weeks about.

E8bnchr5

Baynes - cross

1 Q. A couple of weeks?

2 A. Yes.

3 Q. You have testified about a meeting that you observed and  
4 listened in on on December 15, 2010 on Dubois. Do you recall  
5 that?

6 A. December 14. The 14th.

7 Q. December 14. I believe you testified, sir, that after  
8 Louis left you, and you were joined by Quay Quay, that there  
9 came a point in time after you had gone to various weed spots  
10 where you went to Dubois with Quay Quay and Raymond. Do you  
11 recall that?

12 A. Yes.

13 Q. You testified as well about overhearing the conversation  
14 that went on inside, is that right?

15 A. Yes.

16 Q. This was from the porch while you were there with Quay  
17 Quay?

18 A. Yes.

19 Q. I believe you testified that there came a point when other  
20 people showed up, is that right?

21 A. Yes.

22 Q. Everyone then who was inside while you were listening from  
23 the outside had a gun, is that right?

24 A. At that time, no.

25 Q. Do you remember telling the prosecutors who interviewed you

E8bnchr5

Baynes - cross

1 that everyone had a gun?

2 A. At that time?

3 Q. Yes.

4 A. No.

5 Q. Do you remember telling the prosecutors that before you  
6 went for the walk where you had looked at the weed spots that  
7 you weren't aware of anybody with a gun; that afterwards, at  
8 Dubois, everybody did have a gun except you and Quay Quay you  
9 claimed?

10 A. No.

11 Q. There came a point in time you said when a group of  
12 individuals arrived at Dubois, correct?

13 A. Yes.

14 Q. And did they come together?

15 A. Two of them did.

16 Q. Who came?

17 A. Bow Wow, Bash, and Gucci.

18 Q. All right. And did Baby E come?

19 A. Not at that time, no.

20 Q. When did he come?

21 A. After I left.

22 Q. After you left?

23 A. Yes.

24 Q. Do you remember at any point telling the prosecutors that  
25 Baby E came to the meeting at Dubois?

E8bnchr5

Baynes - cross

1 A. No.

2 Q. How soon after you and Quay Quay and Raymond went to Dubois  
3 did you see these other individuals?

4 A. Probably like an hour later.

5 Q. How long?

6 A. Like an hour later.

7 Q. An hour?

8 A. Yeah. Like 30 minutes to an hour later.

9 Q. 30 minutes to an hour?

10 A. Yes.

11 Q. After these other individuals arrived I think you testified  
12 about a phone call that you overheard to a woman?

13 A. That was before.

14 Q. That's before these other individuals arrived, is that  
15 correct?

16 A. Yes. That's when she brung the pocketbook with the gun in  
17 it.

18 Q. That's before the individuals arrived?

19 A. Yes.

20 Q. Do you recall anything about a skinny tall Jamaican?

21 A. Yes.

22 Q. What do you recall about a skinny tall Jamaican?

23 A. That he was the guy that went to the house and that he was  
24 the person that was inside the house while L-1 -- L-1 sent him  
25 to the house to see what was going on inside the house.

E8bnchr5

Baynes - cross

1 Q. Was there a particular reason why you left the information  
2 about the skinny tall Jamaican out on direct examination?

3 A. No. I said -- I just didn't describe him. I talked about  
4 him, though, that L-1 called and he was saying that he was  
5 getting ready. I just didn't describe him.

6 Q. This individual came to the house, is that correct?

7 A. Yes. He was there and then he left. He wasn't there that  
8 long.

9 Q. He came to the house, correct?

10 A. Yes.

11 Q. Did he come to the house after these other individuals had  
12 arrived?

13 A. No, before.

14 Q. Did he come to the house after the woman had come?

15 A. No -- yes, he came after the woman came.

16 Q. He came after the woman?

17 A. Yes.

18 Q. And then he left?

19 A. Yes. He wasn't there that long.

20 THE COURT: Mr. Buchwald, let's take the afternoon  
21 break. Ladies and gentlemen, 15 minutes. Please be in the  
22 jury room no later than 4 o'clock. Until then don't discuss  
23 the case.

24 (Continued on next page)

E8bnchr5

Baynes - cross

1 (Jury not present)

2 THE COURT: OK. You may step down.

3 (Witness not present)

4 (Recess)

5 THE COURT: How much more, Mr. Buchwald?

6 MR. BUCHWALD: It appears I will go for the rest of  
7 the day.

8 THE COURT: I'm sorry.

9 MR. BUCHWALD: I fear that I am going to go the rest  
10 of the day with him.

11 THE COURT: You fear?

12 MR. GOLTZER: I give up. I surrender.

13 MR. BAUER: Judge, Mr. Mallory is here. Looking at  
14 the pace, I think we will send him back. I have another  
15 witness before him, too.

16 THE COURT: OK.

17 (Witness resumed)

18 (Continued on next page)

E8bnchr5

Baynes - cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Q. After the group of people arrived at Dubois, how much  
4 longer were you out on the porch with Quay Quay listening to  
5 what was being said inside?

6 A. About 20 more minutes.

7 Q. So from the point that you claim that Bash, Bow Wow, and  
8 Gucci arrived you were out on the porch with Quay Quay for  
9 about 20 minutes?

10 A. Yes.

11 Q. And listening in the whole time, correct?

12 A. Yes.

13 Q. At that point you and Quay Quay left, is that right?

14 A. Yes.

15 Q. Where did you go?

16 A. To my house.

17 Q. I'm sorry?

18 A. My house.

19 Q. Before you went to your house, where did you go?

20 A. To the chicken spot.

21 Q. So you went to a chicken spot. And you mentioned the  
22 chicken spot. That came out during the cross-examination by  
23 Mr. Greenfield, right?

24 A. Yes.

25 Q. But you hadn't mentioned that in your direct examination?

E8bnchr5

Baynes - cross

1 A. No.

2 Q. Because it wasn't important?

3 A. I just skipped over it.

4 Q. You just forgot?

5 A. Yes.

6 Q. You forgot?

7 A. Yes, yes.

8 Q. So you went to Crown Fried, is that what it was called?

9 A. Yes.

10 Q. How long did it take to go from the porch to Dubois to  
11 Crown Fried?

12 A. It right across the street from it, right there. Like --

13 Q. When you say right across the street, it's just a couple of  
14 blocks?

15 A. Once you get to Broadway and Dubois, it's right across the  
16 street.

17 Q. Once you get to what and Dubois?

18 A. Broadway and Dubois.

19 Q. Is that the corner or one block up on the corner?

20 A. That's the corner.

21 Q. And then you go into Crown Fried?

22 A. Yes.

23 Q. And the purpose of that was?

24 A. To warm up.

25 Q. To warm up. And you told the prosecutors about having gone

E8bnchr5

Baynes - cross

1 there to warm up?

2 A. Yes.

3 Q. And you did warm up there, is that correct?

4 A. Yes.

5 Q. And you were there about 15 minutes?

6 A. Yeah, around.

7 Q. Well, could it have been a little longer than that?

8 A. Probably less, I don't --

9 Q. Ten?

10 A. Yes, around ten minutes.

11 Q. So you and Quay Quay warm up at Crown Fried, is that right?

12 A. Yes.

13 Q. And then where did you go?

14 A. To my house.

15 Q. And where is your house?

16 A. Mill Street.

17 Q. And so you walked back from Crown Fried past Dubois?

18 A. No, up the street.

19 Q. How do you get to your house on Mill Street?

20 A. You go up the street and then down -- it's the corner of  
21 Mill and Dubois -- I mean, Mill and Broadway, you just go up  
22 the street until you get to Mill Street.

23 Q. About how many blocks?

24 A. It's one, one block.

25 Q. So it just takes you a couple of minutes?

E8bnchr5

Baynes - cross

1 A. Yes.

2 Q. Five?

3 A. Yes.

4 Q. Then you go into your house, and it's you and Quay Quay?

5 A. Yes.

6 Q. And any of your family home?

7 A. My mom.

8 Q. You Quay Quay and your mother?

9 A. Yes.

10 Q. And you played with your computer, is that right?

11 A. Yes.

12 Q. You went on to Facebook, is that right?

13 A. Yes.

14 Q. You played games?

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. And I think your testimony was that you were there for  
19 about an hour, is that right?

20 A. Yes.

21 Q. And then you started to walk -- where did you go from  
22 there?

23 A. Back to Dubois Street.

24 Q. It's at that time that you say you met up with Baby E?

25 A. No. We met up with all of them at First Street, on First

E8bnchr5

Baynes - cross

1 Street.

2 Q. How long did it take to meet up with everybody?

3 A. From leaving my house about like ten minutes, fifteen.

4 Q. Ten or fifteen?

5 A. Ten to fifteen minutes.

6 Q. Ten to fifteen minutes before you met him, and here when  
7 say everybody, Baby E was there?

8 A. Yes.

9 Q. Do you recall telling prosecutors, the assistant district  
10 attorney on May 13, 2011 that Baby E was at Dubois?

11 A. No.

12 Q. Do you deny telling the assistant district attorney on May  
13 13 of 2011 that Baby E was at Dubois?

14 A. I don't deny it. I don't remember saying that.

15 Q. You don't remember saying it?

16 A. No.

17 Q. But you might have said it?

18 A. I could have. At that time I was still lying.

19 Q. At that time?

20 A. I was still lying.

21 Q. What was the purpose of the lie that Baby E was at Dubois?

22 A. It was just putting everybody besides -- I don't know. I  
23 don't even know if I said that.

24 Q. You don't know?

25 A. I even know if I said that. I don't know.

E8bnchr5

Baynes - cross

1 Q. Do you remember telling the prosecutors, Assistant District  
2 Attorney Haberman in the presence of your attorney and  
3 Detective Cortez that at Dubois everybody had a gun?

4 A. No.

5 Q. Let me just ask you a little bit about Facebook. You were  
6 a Facebook friend of a number of people, correct?

7 A. Yes.

8 Q. Would you explain to the ladies and gentlemen of the jury,  
9 those who might not be on Facebook, what a friend is on  
10 Facebook?

11 A. A person you can socialize with on it? A person you can  
12 socialize with.

13 Q. You have to speak up. I'm sorry, Mr. Baynes. It's very  
14 hard to hear you.

15 A. A person that you can socialize with that requests you.

16 Q. There are certain friends that you are able, when you write  
17 a message on Facebook, it will go out to a certain category of  
18 friends, is that right?

19 A. I don't know.

20 Q. You got messages or you read postings from friends on  
21 Facebook, did you not?

22 A. Yes.

23 Q. Did you ever send postings to people on Facebook?

24 A. Yes.

25 Q. One of your Facebook friends was Raymond, was he not?

E8bnchr5

Baynes - cross

1 A. Yes.

2 Q. There were certain postings, were there not, concerning  
3 Gucci, isn't that correct?

4 A. I don't know.

5 Q. Let me ask you about the term and the word Gucci.

6 Can you explain to the ladies and gentlemen of the  
7 jury how many meanings Gucci has?

8 A. Gucci can be Gucci I'm good, like as being OK, I'm good.

9 Q. As being? I'm sorry?

10 A. OK. Like, if you're Gucci you, that means you're good,  
11 like you're OK.

12 Q. Can I ask you to stop for a second. Mr. Reporter would you  
13 read that back, the answer if that's all right, your Honor.

14 THE COURT: Sure.

15 (Record read)

16 Q. So if something is Gucci, one of the names, that is that  
17 something is good, it's a happiness, good, cheerful, correct?

18 A. Yes.

19 Q. Can Gucci mean anything else?

20 A. The brand.

21 Q. The brand, like clothes or apparel, is that right?

22 A. Yes.

23 Q. Can Gucci mean anything else?

24 A. Not that I know of.

25 Q. Did you ever hear of Gucci Mane?

E8bnchr5

Baynes - cross

1 A. Yes. Oh yeah, a rapper, too.

2 Q. He is a rapper?

3 A. Yes.

4 Q. And then there is Gucci?

5 A. Yes.

6 Q. The person you have identified?

7 A. Yes.

8 Q. Do you know any other Guccis?

9 A. No.

10 Q. Let me show you, if I might, an exhibit in evidence with  
11 certain Facebook postings. Can somebody give me the number.

12 301A. If we could move to page 50.

13 MR. GREENFIELD: Judge, may we have a sidebar?

14 THE COURT: Sure.

15 (Continued on next page)

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E8bnchr5

Baynes - cross

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(At sidebar)

MR. GREENFIELD: You should have told me you would make some observations about my client during your cross-examination. What is this all about? Where are we going?

MR. BUCHWALD: I am going to eliminate certain Gucci references.

MR. GREENFIELD: You mean like free Gucci, giving away clothing?

MR. NAWADAY: Your Honor, we would stipulate that the Gucci references in that exhibit are not to Mr. Buchwald's client.

THE COURT: OK. Does that satisfy you?

MR. BUCHWALD: No.

THE COURT: Why don't you show me what you have and what it is that you want to do with it.

MR. BUCHWALD: We are going to show Gucci and True E. That is a reference to the clothes.

THE COURT: Do you know who this is?

MR. GREENFIELD: That's my client.

THE COURT: OK.

MR. BUCHWALD: It is in evidence already.

MR. GREENFIELD: Yes, but I don't need you to highlight it.

E8bnchr5

Baynes - cross

1 THE COURT: We can go through this fairly quickly.  
2 You are not going to take the government's stipulation?

3 MR. BUCHWALD: No.

4 MR. GREENFIELD: I could object, but there is no  
5 objection now.

6 THE COURT: OK.

7 MR. BAUER: Are you going to do this with all the  
8 references to Gucci?

9 MR. BUCHWALD: Yes.

10 MR. BAUER: This page is Gucci on page.

11 MR. BUCHWALD: There is, Free my shun Gucci.

12 THE COURT: This refers to the defendant?

13 MR. BAUER: He was arrested the day before. This  
14 Gucci was arrested February 28. So I mean, unless there is  
15 something we don't know, it would be our strong inference that  
16 he is talking about his shun, which is a son, Gucci, who just  
17 got arrested the day before.

18 THE COURT: What does this mean. Mackin?

19 MR. BAUER: Mackin, as Mr. Baynes said on direct,  
20 macking is kind of like chilling, like hanging out.

21 MR. GREENFIELD: Holla could be give me a call, almost  
22 hollering, be in touch.

23 MR. BAUER: Holla is just a declaration.

24 THE COURT: SMH. What do you intend to do?

25 MR. BUCHWALD: We will be putting this in, asking him

E8bnchr5

Baynes - cross

1 if he saw it.

2 THE COURT: OK. This is all in evidence?

3 MR. BAUER: Yes.

4 MR. BUCHWALD: This one was not in evidence yet.

5 THE COURT: They are all in evidence. It came in as a  
6 package.

7 MR. BUCHWALD: This one was excluded from their  
8 package.

9 THE COURT: Was it?

10 MR. BUCHWALD: Because they have agreed that if there  
11 were any additional ones that I wanted to put --

12 MR. BAUER: We have to look at the exhibit because we  
13 have different memories of what it is in. As I told you, my  
14 theory on this is still sound. We have a different memory as  
15 to whether we took it out or not.

16 THE COURT: Mr. Greenfield, do you have an objection  
17 to Mr. Buchwald using what is in evidence to eliminate --

18 MR. GREENFIELD: What is it that you say this says?  
19 What is your argument going to be about this?

20 MR. BUCHWALD: Our argument is going to be that he  
21 knows that Gucci was arrested.

22 MR. GREENFIELD: Right.

23 MR. BUCHWALD: He knows that Gucci and your client  
24 know each other. Have they made up the story about your  
25 client? It's very easy now to insert Gucci for the first time,

E8bnchr5

Baynes - cross

1 who he's never inserted before, into his narrative that he  
2 feeds the district attorney's office three months later for the  
3 first time.

4 MR. GREENFIELD: This is being sent by my client or  
5 your client.?

6 MR. BUCHWALD: This is being sent by your client.

7 MR. GREENFIELD: How does my client's feeding the  
8 name -- I would object to it.

9 MR. BAUER: As Mr. Nawaday is reminding me it's not  
10 clear Mr. Baynes is going to say this is the same Gucci.

11 MR. BUCHWALD: Mr. Baynes is going to say, according  
12 to the 3500, that is the rapper.

13 MR. BAUER: Right. It is our theory that this was  
14 Gucci given the timing and the fact -- remember, this is  
15 reckless, not Baynes, posting. So really Baynes doesn't know  
16 one way or the other.

17 THE COURT: The first question should be, Did you see  
18 this, right? And maybe he did, maybe he didn't. I don't know.

19 MR. BUCHWALD: Maybe he did, maybe he didn't. But  
20 he's already testified to being a Facebook friend of Raymond's.  
21 When you go on to Facebook you see the postings of your  
22 friends. That is what Facebook is. So he can deny it if he  
23 wants, but --

24 THE COURT: OK. The objection is overruled.

25 (Continued on next page)

E8bnchr5

Baynes - cross

1 (In open court)

2 MR. BUCHWALD: May we proceed, your Honor?

3 THE COURT: You may.

4 BY MR. BUCHWALD:

5 Q. Showing you page 50 in evidence, so if we could put it on  
6 everybody's screen. Just so that I'm clear, when you are a  
7 friend of someone on Facebook, if that friend puts up a posting  
8 on their wall, then the people who are that person's friends  
9 see the posting if they look, correct?

10 A. Yes, yes.

11 Q. So my question to you is, first, do you remember one way or  
12 another if you saw this posting?

13 A. No, I don't.

14 Q. You don't remember?

15 A. I was arrested at this time.

16 Q. You were in?

17 A. Jail at this time.

18 Q. You were in jail at this time. Sir, do you know if Gucci  
19 and True E is referring to the belt that Reckless is wearing, a  
20 Gucci belt?

21 A. Yes.

22 Q. The inverted Gs on the belt, correct?

23 A. Yes.

24 Q. I want to show you page 5. This is March 30, 2010. You  
25 weren't in jail then, correct?

E8bnchr5

Baynes - cross

1 A. Yes.

2 Q. I'm correct, right?

3 A. Yes.

4 Q. This is a reference to Gucci Mane, my shun, is that  
5 correct?

6 A. Yes.

7 (Continued on next page)

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E8B9CHR6

Baynes - cross

1 Q. And what is this Gucci a reference to?

2 A. The rapper.

3 Q. The rapper Gucci Mane?

4 A. Yes.

5 Q. Gucci Mane had been arrested for something, correct?

6 A. Yes.

7 Q. And there's a reference there to Waka Flocka; is that  
8 right?

9 A. Yes.

10 Q. Waka Flocka is also a rapper; is that correct?

11 A. Yes.

12 Q. Have you ever heard of 50 Cent?

13 A. Yes.

14 Q. Is 50 Cent a rapper?

15 A. Yes.

16 Q. Now let me show you what's been marked as Exhibit F1 for  
17 identification. Do you know if you -- withdrawn.

18 It's a Facebook posting, correct?

19 A. Yes.

20 Q. And do you recall if you saw that Facebook posting?

21 A. No.

22 Q. You don't know?

23 A. No.

24 Q. You may have. You may not have?

25 A. May have -- yeah. Yeah, I may have. May not have.

E8B9CHR6

Baynes - cross

1 Q. You may have?

2 A. Yes.

3 Q. Because you were not in jail yet on that day, correct?

4 A. No.

5 Q. That's a Facebook posting of March 1 of 2010?

6 A. Yes -- no. 2011.

7 Q. March 1 of -- excuse me. March 1 of 2011, correct?

8 A. Yes.

9 MR. BUCHWALD: We offer F1 for identification in  
10 evidence.

11 MR. GREENFIELD: May we see it?

12 THE COURT: Yes, you may.

13 MR. GREENFIELD: No objection.

14 MR. NAWADAY: No objection.

15 THE COURT: There being no objection, Defendant Thomas  
16 F1 is it?

17 MR. BUCHWALD: Yes, your Honor.

18 THE COURT: Will be received.

19 (Defendant's Exhibit Thomas F1 received in evidence)

20 MR. BUCHWALD: May I publish it, your Honor?

21 THE COURT: You may.

22 Q. You testified that you may have seen this; is that right?

23 A. Yes.

24 Q. And what is this?

25 A. Facebook posting saying "free Gucci."

E8B9CHR6

Baynes - cross

1 Q. And what did it mean?

2 A. Free Gucci.

3 Q. And what did you understand it to mean?

4 A. It could have been the rapper or it could have been this,  
5 of Gucci here. I don't know.

6 Q. And, indeed -- and you understood it when you saw it?

7 A. Just now? I don't remember seeing it before but just now.

8 Q. You don't remember seeing it before.

9 A. No.

10 Q. You saw it in the United States Attorney's Office, didn't  
11 you? Didn't they show it to you?

12 A. No.

13 Q. Didn't they show it to you just -- (Pause) couple days ago?  
14 Didn't you tell the United States Attorney that you believed  
15 this is a reference to the rapper?

16 A. No.

17 Q. You deny having told the U.S. Attorney that you believed it  
18 was a reference to the rapper?

19 A. I don't -- I probably did but I didn't know the dates of  
20 it. I thought it had something to do with the first posting.

21 Q. The fact of the matter is you read it and you believed it  
22 to be, when you saw it, in March of 2011 a reference to Gucci  
23 the person; isn't that correct?

24 THE COURT: Gucci which person?

25 MR. BUCHWALD: Gucci who he's identified in this

E8B9CHR6

Baynes - cross

1 courtroom as part of the robbery homicide.

2 THE WITNESS: Yes.

3 Q. And isn't it a fact, sir, that prior to this, prior to the  
4 time that you saw that posting on March 1 of 2011 that you had  
5 never, to any policemen, assistant district attorney, or United  
6 States Attorney, ever said or suggested that Gucci was involved  
7 in any way, shape, or form in the Joker robbery homicide; isn't  
8 that a fact?

9 A. Yes -- I never seen this --

10 Q. And isn't it a fact, sir, when you arrived at Orange County  
11 jail on April 7 of 2011 one of the people that was in the jail  
12 that you saw was Gucci; isn't that correct?

13 A. I seen him once later.

14 Q. You saw him in the jail; is that right?

15 A. Yes.

16 Q. And then for the first time sometime in May of 2011 you  
17 claimed that Gucci was somehow involved in the robbery and the  
18 homicide -- the Joker homicide; isn't that correct?

19 A. Yes.

20 Q. Because you thought that that was a lie that you might be  
21 able to sell to the prosecutors; isn't that so?

22 A. No.

23 Q. Well, let's go back to the different statements that you  
24 made to police and assistant district attorneys and federal  
25 prosecutors at different times. And I'm not going to repeat

E8B9CHR6

Baynes - cross

1 all of those questions and answers that you gave to Mr. Goltzer  
2 last Thursday and today.

3 It's fair, is it not, to say that in all of the  
4 statements that you gave to the police at the hospital, the  
5 many, many different versions that you gave to the police at  
6 the hospital when you were mentioning Bash and Baby E, you  
7 never mentioned Gucci; isn't that correct?

8 A. No.

9 Q. I'm not correct or I am correct?

10 A. Yeah, you are correct. You are correct.

11 Q. I'm correct.

12 And you've testified you knew Gucci already; isn't  
13 that right?

14 A. Yes.

15 Q. And then you got arrested in April of 2011; is that  
16 correct?

17 A. Yes.

18 Q. And when you got arrested you saw Gucci was in jail,  
19 correct?

20 A. Yeah months later.

21 Months later, yeah.

22 Q. Well Gucci was in jail when you arrived there; isn't that  
23 true?

24 A. I didn't know.

25 Q. And you were shown or told about the statements and the

E8B9CHR6

Baynes - cross

1 physical evidence that the prosecutors said they had that  
2 showed that you were involved in the Joker robbery and  
3 homicide, correct?

4 A. Some of them.

5 Q. The day you were arrested they announced in open court that  
6 they had found blood samples, correct?

7 A. Yes.

8 Q. They announced in open court about all of the contradictory  
9 statements that you had made, correct?

10 A. Yes.

11 Q. And you spoke to your lawyer, correct?

12 A. Yes.

13 Q. AJ?

14 A. Yes.

15 Q. Mr. Albert Iuele?

16 A. Yes.

17 Q. And you and he went in to see the various pieces of  
18 evidence that they had against you, correct?

19 A. Yes.

20 Q. And so you decided at that time to speak to the prosecutors  
21 and see if you could persuade them that you were not involved,  
22 correct?

23 A. Yes.

24 Q. And so you spoke on May 13 of 2011, correct?

25 A. Yes.

E8B9CHR6

Baynes - cross

1 Q. You spoke to assistant district attorney Haberman who had  
2 been the assistant district attorney in court when you were  
3 arrested on April 7?

4 A. Six.

5 Q. Isn't that right?

6 A. April 6, yes.

7 Q. April 6.

8 And you told him, did you not, that you hadn't been  
9 telling the truth up until then but now you were going to tell  
10 the truth?

11 A. (No response).

12 Q. Correct?

13 A. I didn't say that --

14 Q. In substance, correct?

15 A. Um --

16 Q. You admitted that you had -- well what had you done back in  
17 the hospital, you weaved together some true facts and some  
18 false facts in order to tell an overall lie, correct?

19 A. Yes.

20 Q. But now things were going to be different. You and your  
21 lawyer were in there to tell the assistant district attorney in  
22 Orange County what the true facts were, correct?

23 A. Yes.

24 Q. And so you told the assistant district attorney on  
25 May 13 -- in fact, when you went in on that first occasion to

E8B9CHR6

Baynes - cross

1 speak to Assistant District Attorney Haberman with your lawyer,  
2 Detective Cortez was there, correct?

3 A. Yes.

4 Q. And on this occasion you told him that there were people  
5 that you had met that you've seen at Dubois; isn't that right?

6 A. Yes.

7 Q. But you didn't tell him that Gucci was one of them, did  
8 you?

9 A. No.

10 Q. You didn't mention Gucci's name at all on May 13, did you?

11 A. I don't think so, no.

12 Q. You told him that at Dubois among the people there was  
13 Baby E; isn't that correct?

14 A. Yes.

15 Q. And you told him that the people at Dubois all had guns;  
16 isn't that correct?

17 A. I don't remember saying that.

18 Q. I'm sorry.

19 A. I don't remember saying that.

20 Q. Let me show you what's been marked for identification as  
21 3501-6.

22 MR. BUCHWALD: May I approach, your Honor?

23 Q. See if that refreshes your recollection, directing your  
24 attention to the bottom third.

25 Tell me when you're finished reading, please.

E8B9CHR6

Baynes - cross

1 (Pause)

2 Does that refresh your recollection, sir?

3 A. I still don't --

4 Q. I'm sorry?

5 A. I still don't think I said that.

6 Q. You still don't recall having said that.

7 Do you deny having said that?

8 A. Yes.

9 Q. Does it refresh your recollection that you told them that  
10 Baby E was at Dubois?

11 A. No. I never said -- I don't remember --

12 Q. Do you remember telling them that Baby E was at Dubois?

13 A. No.

14 Q. You don't remember that now either?

15 A. I -- yes. Yes. I said that, yes.

16 Q. You did say that?

17 A. Yes. At that time, yes.

18 Q. But you don't remember telling the prosecutors at that time  
19 that they all had guns?

20 A. No.

21 Q. And no mention whatsoever of Gucci that day at that meeting  
22 with the assistant district attorney; isn't that true?

23 A. Yes. I don't think so.

24 Q. But you didn't mention it? Correct?

25 A. Correct.

E8B9CHR6

Baynes - cross

1 Q. Now, at that meeting with the assistant district attorney  
2 after you told him that now you're going to tell the truth you  
3 described the shooting of Joker; isn't that right?

4 A. Yes.

5 Q. And you told him and you were standing at the corner of  
6 Lander and First and you saw Joker -- a person who turned out  
7 to be Joker cross the street, pulling on the door, correct?

8 A. Yes.

9 Q. You said you could see him from behind, correct?

10 A. Yes.

11 Q. From the corner, correct?

12 A. Yes.

13 Q. Where you and Quay Quay were, correct?

14 A. Yes.

15 Q. And you saw shots fired out the door?

16 A. Yes.

17 Q. And you said -- you told them that the shooter had a  
18 half-mask on, correct?

19 A. I don't remember saying that.

20 Q. You told them that you thought the shooter was Bash,  
21 correct?

22 A. I said I thought it was Bash or Bow Wow.

23 Q. Did you tell them that you thought it was Bash?

24 A. Yes, sir. Or Bow Wow. Yes.

25 Q. Right. You didn't say you thought it was Bash or Bow Wow.

E8B9CHR6

Baynes - cross

1 You said you thought it was Bash.

2 Isn't that right?

3 A. No. I said both. One or the other.

4 Q. That whole story was a lie, was it not?

5 A. Most of it.

6 Q. Most of it?

7 A. Yes.

8 Q. Even though you gave all of those details about standing at  
9 the corner at First and Lander and about seeing somebody  
10 pulling on the door, that was a lie, correct?

11 A. Yes.

12 Q. Now, were you trying to protect Gucci by not telling them  
13 about Gucci?

14 A. I was trying to tell as least as possible.

15 Q. Say that again.

16 A. The least amount of information as possible.

17 Q. Now, a week later you came back to the district attorney's  
18 office with your attorney again, correct?

19 A. Yeah. Yes.

20 Q. Well let me stick with the first story on May 13. On  
21 May 13, that first time you were back with ADA Haberman and  
22 Detective Cortez and your attorney you told them that at the  
23 end after the -- you heard the shooting, after you saw Joker  
24 pulling on the door outside and the shooting occurred, that  
25 everybody who had planned the robbery, who you had seen at

E8B9CHR6

Baynes - cross

1 Dubois, came running out and that they ran past you; is that  
2 correct?

3 A. Yes.

4 Q. And you told them, did you not, that you observed more than  
5 five people?

6 A. I don't remember.

7 Q. Do you deny having told ADA Haberman and Detective Cortez  
8 that you saw more than five people?

9 A. No.

10 Q. And that those more than five people included some older  
11 guys who ran past you.

12 Do you remember telling them that?

13 A. No.

14 Q. Do you deny having told ADA Haberman and Detective Cortez  
15 that the folks who ran out included some older guys who ran  
16 past you?

17 A. Yes.

18 Q. You deny that?

19 A. Yes.

20 Yes. Yes.

21 Q. And that's when you told them as well, did you not, that  
22 when -- withdrawn.

23 So you go back on May 20, a week later, to the  
24 district attorney's office and they're asking you questions,  
25 correct?

E8B9CHR6

Baynes - cross

1 A. Yes.

2 Q. And, again, it's ADA Haberman and now there's another  
3 assistant district attorney with him and your attorney and  
4 Detective Cortez, correct?

5 A. Yes.

6 Q. And you're claiming again that when you got to the vicinity  
7 of 54 Chambers Street everybody was already in the building;  
8 isn't that right?

9 A. I think, yes. I don't really remember all the stories I  
10 said.

11 Q. I'm sorry. I couldn't hear you.

12 A. I don't really remember all the stories I said there.

13 Q. You don't remember all the stories you told?

14 A. No.

15 Q. You just remember telling lies, a lot of lies, correct?

16 A. Yes. At that time, yes.

17 Q. Trying to weave some truth with the lies in order to fool  
18 people, correct?

19 A. Yes.

20 Q. In order -- look them in the eye and do your best to fool  
21 them, correct?

22 A. Yes.

23 Q. And you told them about seeing a wrestling match going on  
24 inside; is that correct?

25 A. Yes.

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Baynes - cross

1 Q. And that you started wrestling with the guy -- the guy who  
2 ended up with the gun, correct?

3 A. That I started wrestling with him?

4 Q. You started -- you joined the wrestling match.

5 A. Yes.

6 Q. And it's at that time that you got, you said, poked,  
7 correct?

8 A. After.

9 Q. You told them that it was at that point that you got poked?

10 A. I told them after, after the fight.

11 Q. And that you were -- everybody left and you were the last  
12 one out, correct?

13 A. Outside of that room? Yes.

14 Q. And at that point Detective Cortez or the assistant  
15 district attorneys said wait a minute, wait a minute, you told  
16 us last week that you were at the corner and you saw all this  
17 stuff. Are you saying you were in the apartment, in the  
18 building before everybody went out?

19 A. No.

20 Q. Isn't that the way it happened? Isn't that what happened?  
21 Didn't the ADA say: What is this line of BS you were feeding  
22 us?

23 A. Yes.

24 Q. Yes. Correct?

25 A. Yes.

E8B9CHR6

Baynes - cross

1 Q. Correct?

2 A. Yes. Yes. Yes.

3 Q. So this is the first time then that you told them that you  
4 were in the house already when the person who turned out to be  
5 Joker was shot; isn't that correct?

6 A. Yes.

7 Q. And at this time you told them that there were three  
8 shooters, correct?

9 A. I don't remember.

10 Q. Isn't it a fact that you told them that there were three  
11 shooters and you didn't mention Gucci at all?

12 A. I don't remember.

13 Q. Isn't it a fact that you told them two people were shooting  
14 outside through the door or around the door and that one person  
15 was shooting inside in the other direction; isn't that right?

16 A. I said there was three people that was rotating through the  
17 door.

18 Q. Isn't it a fact that on May 20 of 2011 you told them in  
19 this story that Bash and Bow Wow were shooting outside and  
20 Baby E was shooting inside?

21 A. Yes.

22 Q. Didn't mention Gucci as shooting at all; isn't that  
23 correct?

24 A. I said he was helping too.

25 Q. On May 20 you didn't mention Gucci as shooting at all;

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Baynes - cross

1 isn't that correct?

2 A. I remember saying he was helping; not that he was shooting,  
3 that he was helping with the door.

4 Q. Isn't it a fact that on May 20 you didn't mention Gucci as  
5 helping with the door or shooting; isn't that correct?

6 A. No.

7 Q. Do you deny it?

8 A. Do I deny --

9 Q. That you make no mention of Gucci as shooting or helping  
10 with the door?

11 A. No, I don't deny it.

12 Q. Do you deny having told prosecutors that you believed that  
13 Bash was the one who shot Joker?

14 A. I said Bash or Bow Wow.

15 Q. Now, that May 20 meeting when you returned to the district  
16 attorney's office you told them about another person who was  
17 there, not shooting, not helping with the door, but someone who  
18 you told them name was G. Do you remember that?

19 A. No.

20 Q. Do you remember telling them there was a black male, dark,  
21 skinny teenager, 18 or 19, from up at the Heights with Baby E  
22 with the name G.

23 Do you remember telling them that?

24 A. No.

25 Q. Do you deny that you told them that?

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Baynes - cross

1 A. Yes. I don't remember saying that.

2 Q. You deny it or you're not sure?

3 A. I'm not sure. I don't remember saying it.

4 I'm not sure. I don't remember saying it.

5 Q. You don't remember saying it. You might have said it? You  
6 might not have?

7 A. Right.

8 Q. And do you remember if Detective Haberman or anybody else  
9 said is G Gucci? Do you remember that?

10 A. No. When I said Gucci I said his whole name, Gucci, not G.

11 Q. Do you remember describing this person as skinny teenager,  
12 18 or 19, up at the Heights, with Baby E?

13 A. No.

14 Q. But you knew Gucci, you believed, was five or six years  
15 older than you; isn't that right?

16 A. Yes.

17 Q. And you were just short of your 18<sup>th</sup> birthday when that  
18 homicide occurred; isn't that right?

19 A. Yes.

20 Q. You knew he wasn't 18 or 19, correct?

21 A. No. I didn't know -- I don't know his age.

22 Q. You believed he wasn't 18 or 19, correct?

23 A. Yes.

24 THE COURT: Mr. Buchwald, it's 5:00 so we're going to  
25 end for the day. Ladies and gentlemen, we will see you bright

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Baynes - cross

1 and early tomorrow morning. Please try to be in the jury room  
2 no later than 9:25 so we can get started on time. Until then,  
3 have a wonderful evening. Please do not discuss the case  
4 including on social media.

5 (Jury excused)

6 (Continued on next page)

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Baynes - cross

1 (In open court)

2 THE COURT: Mr. Baynes, you may step down.

3 (Witness excused)

4 THE COURT: Are there going to be other cooperators  
5 called in this case?

6 MR. BAUER: Four more.

7 THE COURT: Will they be as long?

8 MR. BAUER: Definitely not on direct examination, your  
9 Honor.

10 THE COURT: Is there an end in sight to Mr. Baynes?

11 MR. GOLTZER: One would hope.

12 THE COURT: Because I am starting to hear a lot of  
13 questions again, so.

14 MR. BUCHWALD: I will try to streamline it, your  
15 Honor.

16 THE COURT: Anything further?

17 MR. GREENFIELD: Order of witnesses.

18 THE COURT: Could we have tomorrow's order of  
19 witnesses.

20 MR. BAUER: We told defense counsel a number of times  
21 I'm happy to tell you, your Honor.

22 MR. GREENFIELD: I think it might be an issue with  
23 regard to there is no ruling yet on the chain of custody.

24 THE COURT: Okay.

25 MR. GREENFIELD: They're intending to call the DNA

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Baynes - cross

1 expert tomorrow. I have cross that I have prepared which deals  
2 not with what looks like his testimony is going to be with  
3 regard to chain of custody and I think it would be quite unfair  
4 to have that witness testify until both Goodman and Frederick  
5 testify as to chain of custody of the buccal swab and I'm not  
6 going to have an opportunity to prepare that cross until the  
7 day -- I've done the cross. At this point I don't know if it's  
8 appropriate on the change of circumstances.

9 THE COURT: What will the order be?

10 MR. BAUER: Judge the order for tomorrow was -- is  
11 going to be -- we're going to finish up Mr. Baynes. Then  
12 Detective Goodman who took the buccal swab from Mr. Christian  
13 on October 7, 2010. And then the DNA expert. Mind you that  
14 order, including saving the DNA expert until now, was at  
15 Mr. Greenfield's request. He's speaking of these change of  
16 circumstances but the reason why it is this way, and we've  
17 pushed in particular the DNA expert as far as tomorrow, because  
18 he has vacation plans after that.

19 THE COURT: Okay.

20 MR. GOLTZER: Then Mallory.

21 MR. BAUER: Then Officer William Lahar and then Jamar  
22 Mallory.

23 MR. GREENFIELD: Judge, I would ask the Court to  
24 preclude the testimony with regard to the DNA. But if the  
25 court is inclined to allow it in, then I would ask the Court to

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Baynes - cross

1 ask the witness to hold off or the prosecution -- adjust my  
2 cross to change in the circumstances.

3 THE COURT: I don't understand. As I understand,  
4 there are no changed circumstances other than the government  
5 actually has the chain of custody. They do not intend to  
6 introduce it, correct?

7 MR. BAUER: That's correct.

8 THE COURT: Their plan is the same as it was when you  
9 opened. I really don't see a basis for, first of all,  
10 precluding the testimony. And I don't see a basis for  
11 otherwise punishing the government in any way for this late  
12 disclosure. Apparently you did know the contours of this other  
13 case. You knew that there was this other case. You knew that  
14 the buccal swab was taken in connection with that other case.  
15 The government's plan as I understand it and their order will  
16 be the same as they've indicated to you. So I don't see how  
17 you will be prejudiced going forward. Okay.

18 Anything further?

19 MR. BAUER: Not from the government, your Honor.

20 THE COURT: Very well. So we'll see you folks  
21 tomorrow morning. Try to be here by 9 or be here by 9.

22 (Adjourned to August 12, 2014 at 9:00 a.m.)  
23  
24  
25

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